Supreme Court, U.S.
FILED
07-103 JUL 23 2007
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

RICKIE L. REBER, TEX WILLIAM ATKINS, STEVEN PAUL THUNEHORST, and C.R.,

Petitioners,

v.

THE STATE OF UTAH,

Respondent.

On Petition For Writ Of Certiorari To The Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

MICHAEL L. HUMISTON
Counsel for Petitioners
23 West Center Street
P.O. Box 486
Heber City, UT 84032
(435) 654-1152

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Petitioners, three adults and one minor, are members of an Indian tribe. While hunting on lands within the Indian reservation, they were cited and subsequently convicted in State court for poaching.

1. Should a jury have been able to determine whether the adult petitioners acted reasonably in relying upon published opinions of the 10th U.S. Circuit Court of Appeals?

2. Could the juvenile court delete intent as an element of the offense charged against the juvenile petitioner after receiving uncontested evidence that the juvenile acted at the direction of his father and in reliance upon federal court rulings?

3. Were the adult petitioners denied a fair trial due to bias on the part of the trial judge?

4. Did the Ute Partition Act expel the Uintah Band as a body from the Ute Tribe? Act of August 27, 1954, ch. 1009, 68 Stat. 868, 25 U.S.C. §§677-677aa.

5. Could the Ute Partition Act have any effect on the treaty rights of a person born prior to the Act who was not included on the termination roll prepared under the Act?

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PETITION FOR WRIT OF CERTIORARI

The Petitioners respectfully petition for a writ of certiorari to review the judgment of the Utah Supreme Court in *State of Utah v. Reber, et al.*

OPINIONS AND ORDERS

The opinion of the Utah Supreme Court is reported at 2007 UT 36, 576 Utah Adv. Rep. 21. App. 1-12. It was entered on April 24, 2007. The opinions of the Utah Court of Appeals are reported at 2005 UT App 485, 128 P.3d 1211, App. 13-21, and 2005 UT App 486. App. 22-23. They were entered on November 10, 2005. Petitions for rehearing before the Utah Court of Appeals were denied on March 2, 2006. App. 40, 41. The order of the Eighth District Juvenile Court of Utah, Uintah County, convicting the juvenile petitioner was entered on March 18, 2004. App. 24-30. The order of the Eighth Judicial District Court of Utah, Uintah County, granting the State's motion in limine was entered on January 21, 2004. App. 31-37. The order of the same court denying Petitioner's motion to disqualify the trial judge was entered on November 10, 2003. App. 38-39. The orders of the juvenile and district courts are unreported.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the final judgment rendered by the highest court of a State pursuant to 28 U.S.C. §1257(a) where any title, right, privilege, or

immunity is specially set up or claimed under the Constitution, treaties, or statutes of the United States.

CONSTITUTIONAL AND OTHER PROVISIONS

United States Constitution,
Amendment XIV, Section 1

* * * No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Executive Order of October 3, 1861

Department of the Interior
Washington, October 3, 1861

SIR: I have the honor herewith to submit for your consideration the recommendation of the Acting Commissioner of Indian Affairs that the Uintah Valley, in the Territory of Utah, be set apart and reserved for the use and occupancy of Indian tribes.

In the absence of an authorized survey (the valley and surrounding country being as yet unoccupied by settlement of our citizens), I respectfully recommend that you order the entire valley of the Uintah River within Utah Territory, extending on both sides of said river to the crest of the first range of contiguous mountains on each side, to be reserved to the United States and set apart as an Indian reservation.

Very respectfully, your obedient servant,

CALEB B. SMITH, *Secretary.*

THE PRESIDENT.

EXECUTIVE OFFICE, *October 3, 1861*

Let the reservation be established, as recommended by the Secretary of the Interior.

A. LINCOLN

STATEMENT OF THE CASE

1. *Summary of Facts, Uintah Band.* Petitioners are members of the Uintah Band of Indians. R. 167-191. The Uinta Valley Reservation was created by Executive Order of President Abraham Lincoln on October 3, 1861. Congress confirmed this Order on May 5, 1864, stating that the Uinta Valley was "set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said [Utah] territory as may be induced to inhabit the same." Act of May 5, 1864, ch. 57, 13 Stat. 64. R. 123.

Upon creation of the reservation, the Department of the Interior set up the Uintah Agency to manage the affairs of the Uinta Valley Reserve. Those Indians of Utah Territory who gathered in the Uinta Valley and came under the jurisdiction of the Uintah Agency became known as the "Uintah Band." Few if any members of the Uintah Band were ethnically Ute. R. 151.

In 1881, the White River Band and the Uncompahgre Utes were brought to Utah under military escort from Colorado, having been previously divested of all lands within the continental United States. R. 152. Although the

Uintah Band, the White River Band, and the Uncompahgre Utes all reside on the present-day reservation within the State of Utah, all Indian rights in the Uinta Valley under the 1861 Order and the 1864 Act are those of the Uintah Band, inasmuch as neither the Whiterivers nor the Uncompahgres inhabited the reservation in 1861, nor are they "Indians of said [Utah] territory," as set forth in the Act of May 5, 1864. R. 232.

Moreover, the Uintah Band has always maintained a distinctly different culture and lifestyle from the other two bands. This included intermarriage with other tribes and non-Indians, and a higher standard of living and education. Accordingly, the Uintah Band has always been known throughout the reservation as the "Mixed-bloods." R. 419-425, App. 67-98. The separate rights of the separate bands have been recognized by various acts of Congress. R. 152.

In 1937, the three bands of Indians inhabiting the reservation adopted a constitution as the "Ute Indian Tribe of the Uintah and Ouray Reservation." R. 169. Nothing in the constitution empowered either the tribe as a whole or any of the three bands to determine the membership of any of the individual bands. By its own terms, the tribal constitution is subject to supervening federal law. App. 45.

Petitioner Rickie Reber was born on June 27, 1952. Petitioner Steve Thunehorst's mother, Leanna Chivers Thunehorst, was born on May 31, 1951. At birth, both Mr. Reber and Ms. Thunehorst were fully eligible for enrollment in the Ute Tribe as members of the Uintah Band. R. 153, 298, 581:10, 28.

On August 27, 1954, Congress passed the "Ute Partition Act" (68 Stat. 868) (hereinafter referred to as "the UPA"). The UPA was part of a policy engaged in by

Congress from 1953 to 1966 of "terminating" federal supervision over select Indian tribes. The policy has since been firmly renounced, commencing with President Richard Nixon's Special Message to the Congress on Indian Affairs in 1970. Pub. Papers 564 (Richard M. Nixon, July 8, 1970). R. 154.

Under the UPA, the tribe was directed to draw up two rolls, one consisting of "mixed-bloods" and the other of "full-bloods." The "mixed-bloods" were then to be terminated from federal supervision. App. 43-44. The UPA makes no mention whatsoever of the separate bands that up to that time constituted the Ute Tribe.[1] Nevertheless, of 490 persons included on the termination roll, 456 were members of the Uintah Band. App. 67-98, R. 226-251. Two hundred and eight members of the Uintah Band were included on the "full-blood" roll, and approximately 220 other Uintahs, including Mr. Reber and Ms. Thunehorst, were not included on either roll, but were nevertheless excluded thereafter from membership in the Ute Tribe. The ultimate effect of the UPA was thus to expel between 68.68 and 76.47% of the Uintah Band from the Ute Tribe. Cross-Petition to Utah Supreme Court, May 30, 2006, page 7; Brief of Cross-Petitioners, October 13, 2006, page 7; Reply Brief of Cross-Petitioners, December 18, 2006, page 2.

Pursuant to the Ute Constitution, the UPA would take precedence over any terms of that Constitution. App. 45. As a terminated tribe, the Uintah Band would thus no longer be a constituent band within the Ute Tribe.

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[1] With the exception of an oblique reference in 25 U.S.C. §677r. App. 44.

This *de facto* termination of the Uintah Band has had several unfortunate consequences. First, notwithstanding the Uintah Band has continued to maintain its tribal identity without federal supervision, the State of Utah, the Ute Tribe, and indeed, ev n the United States have insisted on only recognizing as Indian the diminishing rump portion of the Uintah Band still enrolled in the Ute Tribe. App. 11. Secondly, misguided members of the Uintah Band itself have expended a regrettable amount of time and resources attempting to assert rights under a Ute Constitution to which the Uintah Band is no longer a party (*See, e.g., United States v. Von Murdock*, 132 F.3d 534 (10th Cir. 1997)). Finally, and most significantly, under the color of the UPA, the State of Utah has assumed powers and jurisdiction over members of the Uintah Band vastly beyond those conferred under the Act. "Termination of the mixed-blood Utes, division and distribution of assets, and the organization of UDC under the Partition Act has spawned extensive litigation." *Hackford v. Babbitt*, 14 F.3d 1457, 1463 (10th Cir. 1994). Some excellent studies documenting this tragedy include *Termination's Legacy: The Discarded Indians of Utah* (R. Warren Metcalf, Lincoln, University of Nebraska Press, 2002), and *The Dispossessed: Cultural Genocide of the Mixed-Blood Utes* (Parker M. Nielson, Norman, University of Oklahoma Press, 1998).

In 2000, a group of Uintah Band members acting under the name Timpanogos Tribe sought injunctive relief against State wildlife officers for obstructing tribal hunting on tribal lands. In an interlocutory ruling, the 10th U.S. Circuit held that even terminated tribes nevertheless retain the right to hunt and fish on tribal lands. *Timpanogos Tribe v. Conway* (hereinafter "*Conway*"), 286 F.3d 1195, 1203 (10th Cir. 2002), *citing Menominee Tribe*

v. United States, 391 U.S. 404, 88 S.Ct. 1705, 20 L.Ed.2d 697 (1968). App. 64-65. The court also held that, as Indians of Utah Territory inhabiting the Uinta Valley, the plaintiffs had made out a prima facie case that they possessed the right to hunt and fish on the Reservation. *Id.* at 1204. App. 66.

2. *Summary of Facts, Uintah and Ouray Reservation*. Independent of any issues as between the Uintah Band and the Ute Tribe, the Ute Tribe itself has engaged in extensive litigation against the State of Utah regarding the respective limits of State and tribal jurisdiction. After a series of journeys back and forth between the federal district court and the 10th Circuit[2] (and one trip to this Court[3]) this litigation culminated in the 10th Circuit's holding in *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 114 F.3d 1513 (10th Cir. 1997), *cert. denied*, 522 U.S. 1107, 118 S.Ct. 1034, 140 L.Ed.2d 101 (1998) (*hereinafter Ute V*). App. 48-57.

In short, *Conway* recognized a right in terminated tribes to hunt and fish on Indian lands, while *Ute V* defined those lands.

3. *The Reber prosecution*. The *Conway* ruling was released in April, 2002. In October, 2002, fully aware of the

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[2] *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 521 F. Supp. 1072 (D.Utah 1981) (*Ute I*); *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 716 F.2d 1298 (10th Cir. 1983) (*Ute II*); *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 773 F.2d 1087 (10th Cir. *en banc* 1985), *cert. denied*, 479 U.S. 994, 107 S.Ct. 596, 93 L.Ed.2d 596 (1986) (*Ute III*); *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 935 F. Supp. 1473 (D.Utah 1996) (*Ute IV*).

[3] *Hagen v. Utah*, 510 U.S. 399, 114 S.Ct. 958, 127 L.Ed.2d 252 (1994).

10th Circuit's holding regarding terminated tribes (App. 58-66), Mr. Reber took his (then) 13-year-old son C.R. hunting on lands they knew to be defined as Indian under *Ute V*. Although C.R. was able to shoot his first buck, it was confiscated shortly thereafter by State wildlife officials, who charged C.R. in Utah's Eighth District Juvenile Court, Uintah County, with "Wanton Destruction of Protected Wildlife," i.e., poaching. R. C.R. 30-31. Mr. Reber was charged in the Eighth District Court, Uintah County, with Aiding and Abetting in the Wanton Destruction. Since the spread of the deer's antlers exceeded 24 inches, the animal constituted a trophy buck, and the offense was elevated to a third degree felony against both father and son. App. 2, R. 2-3.

Petitioners Atkins and Thunehorst shot a smaller deer the following month in a separate location, albeit still within the reservation as defined under *Ute V*, and fully aware of the holdings in both *Ute V* and *Conway*. R. Atkins 73-107, Thunehorst 74-109. Both men were charged with Wanton Destruction of Protected Wildlife, a Class A Misdemeanor. The cases were assigned to the same judge hearing Mr. Reber's case, and both Petitioners subsequently stipulated to be bound by the trial court's pretrial rulings in the *Reber* case. App. 3.

In the trial court, the point of contention was the distinction between the rights of Indian *tribes*, on the one hand, and those of *individual* Indians, on the other. The Petitioners maintained that Indian status derives *either* from membership in an Indian tribe *or* from blood quantum. *Zarr v. Barlow*, 800 F.2d 1484 (9th Cir. 1986). R. 178-180. The Petitioners never claimed the right to hunt on any other basis than as members of the Uintah Band. They asserted that once an Indian tribe acknowledges persons as members, the sole question remaining for the

court is whether the *tribe* holds rights, *not* whether the defendants are Indians. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72, n.32, 98 S.Ct. 1670, 1684, n.32, 56 L.Ed.2d 106 (1978) (Tribe retains the sovereign right to determine its own membership). R. 178-180.

In contrast, the trial judge would accept no argument or evidence either from or regarding the Uintah Band, insisting that the Petitioners must prove their status as Indians individually or not at all. R. 260-265. Indeed, the trial judge stated at the outset that he was under no obligation to follow federal law. App. 99-105. When it became apparent that the judge was as good as his word on this point, the Petitioners moved to have him disqualified. R. 276-292, App. 38-39.

At the trial court's request, the parties briefed the effect of the UPA on the rights of the Petitioners. R. 580:43. Since Mr. Reber was born two years prior to enactment of the UPA and was never included on the termination roll, he contended that it had no effect on his rights at all. R. 180-181. The trial court rejected this argument, implying that hunting and fishing rights could not be inherited, but termination could be. R. 260-265.

Mr. Reber attempted to introduce evidence that he could not possess criminal intent if he possessed a good faith belief that he was not committing a crime, and that that belief was based upon a reasonable reading of published court rulings by a court of competent jurisdiction. App. 47, R. 305-309. The trial court prohibited all such evidence, holding that any reliance by the Petitioners upon *Ute V* or *Conway* was "unreasonable as a matter of law," App. 36-37.

Notwithstanding his best efforts, Mr. Reber was prohibited from putting on any defense evidence at all, and the jury convicted him in less than seven minutes.

R. 548:168-196. When Mr. Atkins and Mr. Thunehorst were likewise prohibited from presenting any evidence as to their reliance upon *Ute V* and *Conway*, they agreed to plea to reduced charges on condition that their right to appeal be reserved. App. 3.

In the juvenile court, C.R. was charged under the same statute as was his father in the district court. C.R. was more successful in introducing evidence that he had acted in reliance upon his father, who had acted in reliance upon the holdings of the 10th Circuit. In response, subsequent to trial, the trial judge asserted a distinction between "willful" and "scienter," found that "scienter" was not an element of a statute unrelated to the one under which C.R. was charged, and proceeded to convict C.R. The juvenile court stayed sentencing until the outcome of all appeals. App. 24-30.

4. *Utah Court of Appeals Decision.* In response to the Petitioners' appeal to the Utah Court of Appeals, the State of Utah promptly conceded that the Petitioners *were* in fact on Indian land. The Court of Appeals thus vacated both the adult and juvenile convictions, finding that under *Ute V*, the Ute Tribe was the victim of the crime, and the State was thus divested of jurisdiction. App. 17. Interestingly, both the State of Utah and the Court of Appeals considered themselves bound by the very 10th Circuit ruling upon which the trial court found it "*unreasonable* as a matter of law" for the Petitioners to rely. App. 36. (Emphasis added).

The Petitioners fully briefed the Court of Appeals on the issues of reasonable reliance (adult case) and scienter (juvenile), as well as the rights of persons born prior to the UPA yet not included on the termination roll. Due to its

threshold finding on jurisdiction, the Court of Appeals found it unnecessary to address these issues. App. 17. Unfortunately, the court based its jurisdictional finding on an assertion that the Uintah Band has no existence independent of the Ute Tribe. App. 17. In short, the court had come to the right conclusion for the wrong reason. The Petitioners thus cross-appealed to the Utah Supreme Court to question how the Uintah Band could fail to have an independent existence when the UPA expelled well over two thirds of its membership from the Ute Tribe.

5. *Utah Supreme Court Decision.* The Utah Supreme Court did not dispute that *Ute V* was applicable, nor did it find reliance thereon to be "unreasonable as a matter of law." ("[T]he language of *Ute Tribe V* gives us pause." App. 6.) Rather, the Court was influenced by three other factors: (1) In the Ute Tribe's zeal to defeat the Uintah Band, the Ute Tribe actually appeared before the court and renounced the very jurisdiction otherwise accorded to it under *Ute V*,[4] App. 7; (2) Rather than finding the Ute Tribe to be a victim, the Utah Supreme Court found the crimes to be victimless, App. 8; and (3) the court apparently recognized no distinction between federal treaty rights (reserved even to terminated tribes) and federal recognition (withdrawn from the Uintah Band by the UPA). App. 11, n.28.

Although the Utah Supreme Court did not reject *Ute V* as had the trial court, it did not address the separate due process question as to whether a jury should have

[4] At no time have either the Ute Tribe or the State of Utah ever complied with the requirements for relinquishing and acceding to jurisdiction under 25 U.S.C. §§1321(a), 1324, and 1326. R. 21-23.

determined the factual element of intent. Given the opportunity either to sustain the Utah Court of Appeals' holding on this alternative basis or remand the matter to the trial court, the Utah Supreme Court did neither. The State's appellate courts have thus implicitly sustained a trial ruling directly in conflict with this Court's precedents regarding due process.

REASONS FOR GRANTING THE PETITION

The Petitioners have yet to present their reasonable reliance defense to a jury, even though two appellate courts have found one of the rulings not only reasonable, but binding. But more importantly, no federal court has ever addressed the effect of the Ute Partition Act on the Uintah Band, nor its effect on those persons excluded from the termination rolls who were living at the time of its enactment. As the potential for friction between the Uintah Band, the Ute Tribe, and the State of Utah continues to grow, the need for a clear judicial interpretation of the UPA becomes ever more urgent.

A. The trial court's order prohibiting the Respondents from presenting evidence of reasonable reliance on published court opinions directly contradicts the holdings of this Court regarding due process of law.

Conway stated that even terminated tribes retain hunting rights. App. 64-65. *Ute V* defined Indian lands within the reservation. App. 49-57. Relying on *Conway* and *Ute V*, the Petitioners believed that as members of the Uintah Band they could hunt on reservation lands. They

were subsequently charged and convicted of being non-Indians poaching on non-Indian lands.

This Court has held that a person cannot be convicted of a crime if they undertook the prohibited conduct in reasonable reliance upon a published interpretation of the law. *United States v. Caceres*, 440 U.S. 741, 753 n.15, 99 S.Ct. 1465, 1472 n.15, 59 L.Ed.2d 733 (1979). The defense of mistake of law is based on the due process clause contained in the Fifth and Fourteenth Amendments to the U.S. Constitution. *Cox v. Louisiana*, 379 U.S. 559, 571, 85 S.Ct. 476, 484, 13 L.Ed. 487 (1965); *Bouie v. City of Columbia*, 378 U.S. 347, 354, 84 S.Ct. 1697, 1703, 12 L.Ed.2d 894 (1964). The Utah legislature has codified this rule as Section 76-2-304(2) of the Utah Code. App. 47.

The trial court had already declared that it was not bound by either *Ute V* or *Conway* (App. 99-105), that the Petitioners were not Indians, and that they were not on Indian land. R. 260-265. However, even accepting this as the "Law of the Case," the Petitioners were still entitled to show the jury, *not* that *Ute V* or *Conway* were the law, but that the Petitioners were *reasonable* in *believing* that they were Indians hunting on Indian land based on their reading of *Ute V* and *Conway*. R. 305-309. The issue here is not whether the rulings are or are not correct, but whether the Petitioners were deprived of their right to have a jury determine the factual element of reasonableness. *Pennsylvania Co. v. United States*, 236 U.S. 351, 361, 35 S.Ct. 370, 373, 59 L.Ed. 616 (1915) (reasonableness is a question of fact). Both the Utah Court of Appeals and the Utah Supreme Court have vindicated the Petitioners' belief in the authority of *Ute V*, but neither of these courts have accorded the Petitioners the opportunity to have their defense heard by an impartial jury.

Moreover, the trial court's rejection of the 10th Circuit's precedents does not stand in isolation. As was pointed out at the trial level, to the Utah Court of Appeals, and to the Utah Supreme Court, the Uintah people have had long experience being told by this trial judge that they are not who they are. R. 280-292; 578:3-5; 579:6-10; 580:14-28; 581:28-35; 583:4-5; 584:10-11, 13, 74, 109-120, 125, 150, 168-169, 172-175, 190-195. The Petitioners were denied a fair trial due to bias on the part of the trial judge, and the Utah Supreme Court has compounded this inequity by failing to remedy it.

The adult Petitioners were simply prohibited from challenging the State's case as to intent. In the juvenile Petitioner's case, the court removed intent from the elements of the offense *ex post facto*. If intent can be inferred from conduct, it seems safe to infer that the trial courts did not intend for any of the Petitioners to receive a fair trial.

This Court needs to send a clear message to the State of Utah that due process of law includes (1) the right to have a jury determine each and every factual element of a crime, including whether the defendant's good faith reliance upon published federal rulings negates the element of intent; (2) the right to be tried before an impartial judge; and (3) the right to be tried on the same offense for which one has been charged and defended.

B. The effect of the Ute Partition Act on the Uintah Band is an important question of federal law which has never been addressed by a federal court and which the State courts have no authority to determine.

Whether the UPA terminated 68.68% or 76.47% of the Uintah Band from the Ute Tribe, there is no question that

the majority of the Uintah Band was terminated from federal supervision under the Act. The question thus arises how any body politic can exist other than where the majority of its members are found. It is clear that a band that acts independently of a tribe is no longer a part of that tribe. *Montoya v. United States*, 180 U.S. 261, 269-270, 21 S.Ct. 358, 361-362, 45 L.Ed. 521 (1901). The UPA has rendered the Uintah Band independent from the Ute Tribe by sheer force of the numbers involved.

Remarkably, although the numbers have been well known since the time the termination rolls were drawn up in 1956, the effect of the UPA on the Uintah Band has never been addressed by a federal court. The issue was laid before the Utah Supreme Court, and while that court correctly held that it did not have the authority to determine the Uintah Band's eligibility for federal benefits, it incorrectly assumed that Petitioners were seeking such eligibility. App. 11. Hunting rights are not a federal benefit. They are a treaty right unaffected by any termination act. *Menominee Tribe v. United States*, 391 U.S. 404, 412-413, 88 S.Ct. 1705, 1711, 20 L.Ed.2d 697 (1968).

In refusing to recognize the rights retained by the Uintah Band, the Utah Supreme Court ignored important precedents and rules of construction set forth by this Court and the 10th Circuit Court of Appeals. This Court has held that any ambiguities in an act affecting Indians' rights must be interpreted in favor of the Indians. *Bryan v. Itasca County*, 426 U.S. 373, 392, 96 S.Ct. 2102, 2112, 48 L.Ed.2d 710 (1976). As between the Ute Tribe and the Uintah Band, the 10th Circuit has held that this rule of construction should be specifically applied in favor of those terminated under the UPA. *United States v. Felter*, 752 F.2d 1505, 1511 (10th Cir. 1985).

In summary, the effect of the UPA on the Uintah Band is an important question of federal law which has not been, but ought to be, decided by this Court, and which the Utah Supreme Court addressed in a manner contrary to the governing precedents established by this Court and the 10th Circuit.

C. The effect of the Ute Partition Act on persons born prior to its enactment yet omitted from the termination rolls is an important question of federal law which has never been addressed by a federal court and which the trial court decided contrary to the relevant federal authorities.

Quite independent of the UPA's devastating effects on the Uintah Band, no federal court has ever taken up what effect, if any, the UPA could have on persons born prior to its enactment yet excluded from either roll. This group, and their descendants, represent a sizeable and growing number of persons whose fate under the UPA remains undetermined.

Ironically, in 1955, at the very height of the termination fever, the U.S. Solicitor opined that no authority existed to place children on the termination roll not otherwise already there. Indeed, he gave it as his opinion that it was the intent of the UPA to actually break up families. App. 106-107. Confronted with the question, the State trial court imputed termination to all such persons, contrary to the suggestion of the 1955 memorandum, and indeed, contrary to the canons of construction set forth by this Court and the 10th Circuit Court of Appeals. *Bryan v. Itasca County*, *supra*; *United States v. Felter*, *supra*. R. 260-265.

It is important that this Court address this question, not only to correct the error of the trial court, but to clarify the status and future of the substantial number of persons whose tribal rights and heritage are at stake.

D. A dispositive ruling by this Court as to the effects and limits of the Ute Partition Act would bring an end to over 50 years of protracted litigation.

A grave injustice has been committed here. A termination act has been extended beyond its scope to not only terminate federal benefits, but to strip an entire people of their heritage, their identity, and their treaty rights. No other termination act has ever been so construed, and nothing in this termination act gives it such power. The UPA must be limited to its actual terms. Those terms were merely to terminate federal supervision over the Uintah Band, not to terminate its existence and appropriate its name and rights to two rival tribes. Likewise, the UPA could not extinguish the tribal rights of persons excluded from the termination rolls completely. By addressing these timely questions, this Court can finally bring an end to over 50 years of fractious litigation.

CONCLUSION

It is as important to understand what this case is not about as well as what it is. This Petition is *not* a challenge to the validity of the Ute Partition Act, but only a request that the Act be limited to its actual terms under the law.

Likewise, this Petition is *not* a backhanded attempt to obtain federal recognition for the Uintah Band, but merely

an effort to uphold those treaty rights reserved to all terminated tribes, and which remain unaffected by Termination Era legislation.

Finally, this Petition is *not* an effort to either challenge or vindicate the 10th Circuit's holdings in *Ute V* and *Conway*, but merely to determine whether the Petitioners' reliance upon those rulings should have been submitted to a jury.

For the reasons stated herein, Petitioners request that certiorari be granted as to the questions set forth in this Petition.

Respectfully submitted,

MICHAEL L. HUMISTON
Counsel for Petitioners
23 West Center Street
P.O. Box 486
Heber City, UT 84032
(435) 654-1152

IN THE SUPREME COURT OF THE STATE OF UTAH

State of Utah,
Plaintiff, Petitioner, and
Cross-Respondent,

v.

Rickie L. Reber; Tex William Atkins;
and Steven Paul Thunehorst,
Defendants, Respondents, and
Cross-Petitioners.

No. 20060299

State of Utah, in the interest of C.R.,
a person under 18 years of age.

No. 20060304

FILED
April 24, 2007

Eighth District, Vernal Dep't
The Honorable A. Lynn Payne
No. 021800320

Attorneys: Mark L. Shurtleff, Att'y Gen., Joanne C. Slotnik, Asst. Att'y Gen., Salt Lake City, Edwin T. Peterson, Vernal, for plaintiff.
Michael L. Humiston, Heber City, for defendants and C.R.
Kimberly D. Washburn, Draper, Tod J. Smith, Boulder, CO, Charles L. Kaiser, Charles A. Breer, Peter J. Hack, Denver, CO, for amicus Ute Indian Tribe.

On Certiorari to the Utah Court of Appeals

WILKINS, Associate Chief Justice:

¶1 The State seeks review of the court of appeals' decision vacating the convictions of Defendants Reber,

Thunehorst, and Atkins. Reber was convicted of aiding or assisting in the wanton destruction of protected wildlife in violation of Utah Code sections 23-20-4 and -23. Thunehorst and Atkins were each convicted of attempted wanton destruction of protected wildlife. The juvenile case against Reber's son, C.R., has been consolidated with this case for purposes of review.

¶2 In vacating the convictions, the court of appeals concluded that the State lacked jurisdiction. We disagree, and accordingly reverse.

BACKGROUND

¶3 During the 2002 deer hunting season, Reber's son shot and killed a large mule deer with Reber's assistance. While transporting the deer, Reber was stopped at a checkpoint in Uintah County where the Utah Division of Wildlife Resources was checking for chronic wasting disease in deer. Conservation officers saw the large buck in the truck bed with no state hunting permit, license, or tag attached to the animal. Because Reber's son, C.R., had killed a trophy buck, the State charged Reber with aiding and assisting in the wanton destruction of wildlife, a third degree felony under Utah Code section 23-20-4(3)(a). C.R. was referred to juvenile court.

¶4 During the same hunting season, Atkins shot a buck in Uintah County, and Thunehorst assisted him. They were both charged with class A misdemeanors under Utah Code section 23-20-4(3)(b).

¶5 Reber filed a motion to dismiss his case, claiming that he is an Indian and was hunting in Indian country and that the State therefore lacked jurisdiction over him.

Atkins and Thunehorst made the same claims but stipulated that the district court's ruling on Reber's motion would apply to their cases.[1] The district court denied Reber's motion, and a jury convicted him. Atkins and Thunehorst entered conditional pleas to class B misdemeanors. All three adult parties appealed to the Utah Court of Appeals, and their appeals were consolidated. C.R., also asserting a lack of State jurisdiction, was adjudicated delinquent on the same basis. He also seeks review.

¶6 The court of appeals vacated the convictions. The court noted that a state has jurisdiction over crimes that occur in Indian country only if neither the defendant nor the victim is Indian. The court of appeals determined that because the crimes did in fact occur in Indian country, and because the Ute Indian Tribe was the victim of the crimes, the State lacked jurisdiction. Having already determined that the State lacked jurisdiction, the court of appeals did not reach defendants' Indian status claims.

¶7 We granted certiorari to determine whether, due to either a regulatory interest over hunting or a property interest in wildlife, the Ute Indian Tribe is a victim of illegal hunting within Indian country. We also granted certiorari to determine whether Defendants have sufficiently demonstrated that they are Indians and, as such, are outside the jurisdiction of the State for acts committed in Indian country.

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[1] Because Thunehorst and Atkins stipulated that rulings made with respect to jurisdiction and Indian status in Reber's case would be binding on them, we base our analysis on the facts in Reber's case.

STANDARD OF REVIEW

¶8 On certiorari, we review the decision of the court of appeals, not that of the the trial court.[2] Whether the district court or the juvenile court has jurisdiction is a question of law that we review for correctness, giving no deference to the lower court.[3]

ANALYSIS

¶9 All parties agree that the land on which the crimes occurred in this case was part of Indian country as defined by federal statute.[4] The United States Supreme Court has described the extent to which states may exercise jurisdiction over crimes committed in Indian country. "Within Indian country, state jurisdiction is limited to crimes by non-Indians against non-Indians and victimless crimes by non-Indians."[5] This crime was not committed against a "non-Indian." Either the acts charged here are victimless, or the victim is the Ute Indian Tribe. Consequently, the State has jurisdiction only if Defendants are non-Indians and if this was a victimless crime.

¶10 The court of appeals concluded that "[b]ecause Defendant's acts of hunting on Indian country affected the Ute Tribe's regulatory interest, the tribe is the victim."[6]

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[2] *State v. Norris*, 2007 UT 6, ¶ 10, 152 P.3d 293.

[3] *Id.*

[4] 18 U.S.C. § 1151 ("[T]he term 'Indian country' . . . means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation. . . . ").

[5] *Solem v. Bartlett*, 465 U.S. 463, 465 n.2 (1984) (citation omitted).

[6] *State v. Reber*, 2005 UT App 485, ¶ 11, 128 P.3d 1211.

The court also suggested that, in addition to the regulatory interest, "[a]n argument might also be made that the Ute Tribe had a property interest in the wildlife" sufficient to make it a victim.[7] We disagree and conclude that Defendants are non-Indians who committed a victimless crime within Indian country but not on Indian land and that, therefore, the State has jurisdiction.

I. DEFENDANTS' ACTIONS CONSTITUTE A VICTIMLESS CRIME

A. The Ute Tribe's Regulatory Interests Were Not Violated

¶11 All parties agree that the animals were killed in Indian country. Indian country is defined by Congress in 18 U.S.C. section 1551 as lands within the historic tribal boundaries. Indian country today may, and often does, include lands lawfully held in fee by non-Indians, as well as lands held by tribes, Indians individually, or others in trust for Indians. It may also contain, as in this instance, federal lands under the auspices of the Bureau of Land Management or the National Forest Service.

¶12 With respect to the Indian country border that encompasses the scene of these crimes, and the character of the contained land, there has been much litigation. Defendants argue that under the most recent decision on this issue, *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah* ("*Ute Tribe V*"),[8] the State of Utah has no jurisdiction in this case. It does, in fact, appear that *Ute*

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[7] *Id.* at n.3

[8] 114 F.3d 1513 (10th Cir. 1997).

Tribe V offers support for Defendants' position. In that case, the United States Circuit Court for the Tenth Circuit states, "[T]he Tribe and the federal government retain jurisdiction over all trust lands, the National Forest Lands, [and] the Uncompahgre Reservation. . . .[9] The State [has] jurisdiction over the fee lands removed from the Reservation under the 1902-1905 allotment legislation."[10]

¶13 Were we to accept Defendants' reading of *Ute Tribe V,* the State of Utah would be without jurisdiction, since it is undisputed that the crimes took place within the original boundaries of the Uncompahgre Reservation. However, the crime scene was either on lands owned by the State or on National Forest land, miles from the nearest land owned by any Indian or Indian tribe. Nevertheless, the language of *Ute Tribe V* gives us pause.

¶14 Fortunately, the United States Supreme Court has given further guidance. In *Montana v. United States,*[11] the Court held that an Indian tribe's authority to regulate fishing and hunting "only extend[s] to land on which the Tribe 'exercises absolute and undisturbed use and occupation'" and "that power cannot apply to lands held in fee by non-Indians."[12]

¶15 We are compelled to read *Montana* to say that there is a jurisdictional difference between "Indian country"

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[9] The Uncompahgre Reservation is now the southern section of today's Uintah and Ouray reservation. *United States v. Von Murdock,* 132 F.3d 534, 540 (10th Cir. 1997).

[10] *Ute Tribe V,* 114 F.3d at 1530.

[11] 450 U.S. 544 (1981).

[12] *Id.* at 558-59.

and "Indian lands" or "Indian property owners."[13] The Court concluded that "[s]ince regulation of hunting and fishing by nonmembers of a tribe on lands no longer owned by the tribe bears no clear relationship to tribal self-government or internal relations, the general principles of retained inherent sovereignty [do] not authorize" a tribe to adopt a resolution regulating hunting and fishing.[14] In other words, the Ute Tribe has no regulatory authority to be offended by acts of Defendants here because the acts did *not* take place on Indian land over which the tribe claimed, or could claim, regulatory authority over hunting and fishing.[15]

¶16 Although the crimes in this case took place in Indian country, it is undisputed that the land on which the crimes took place is not owned by any Indian or Indian tribe. Because the Supreme Court has held that Indian tribes have no authority to regulate hunting and fishing on non-Indian-owned land, we must conclude that the Ute Tribe has no regulatory interest over hunting by non-Indians on this land.[16] As such, the court of appeals incorrectly relied on that regulatory interest as the basis for concluding that the Ute Tribe was a victim.

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[13] *Id.* at 563 n.12.

[14] *See id.* at 564-65.

[15] Further, in *Solem v. Bartlett*, the Supreme Court indicated that states have jurisdiction over victimless crimes committed by non-Indians in Indian country. 465 U.S. 463, 465 n.2 (1984). This crime fits that categorization.

[16] The Ute Tribe, present and represented by counsel as amicus before us, disclaimed any such regulatory interest.

B. The Ute Tribe's Property Interests Were Not Violated

¶17 In addition to having no regulatory interest in hunting on the land in question, the Ute Tribe has no property interest in living, roaming wildlife on the land. Again, we rely upon the authority of the United States Supreme Court. The Court has said that

> it is pure fantasy to talk of "owning" wild fish, birds, or animals. Neither the States nor the Federal Government, any more than a hopeful fisherman or hunter, has title to these creatures until they are reduced to possession by skillful capture.[17]

¶18 Federal courts have applied the same analysis to Indian tribes: "The fact that fish and game are presently upon an Indian reservation does not negate the state interest in conserving them. . . ."[18] Moreover, "[a] tribe cannot claim to 'own' the fish and game on the reservation."[19] And if not on Indian land, then surely not on non-Indian-owned land. Accordingly, Defendants' acts did not violate any property interest of the Ute Tribe in the wildlife.

¶19 Because the Ute Tribe neither has, nor claims, authority to regulate hunting on the land within Indian country at issue in this case, and because the Tribe also has no protected property interest in wildlife, the Ute Tribe is not, and cannot be, a victim of these crimes. Other

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[17] *Douglas v. Seacoast Products, Inc.*, 431 U.S. 265, 284 (1977).

[18] *White Mountain Apache Tribe v. Arizona, Dep't of Game & Fish*, 649 F.2d 1274, 1283 (9th Cir. 1981).

[19] *Id.*

than the wildlife itself, these crimes have no victims. These are, then, victimless crimes within Indian country but not on Indian land.

II. DEFENDANTS FAIL TO ESTABLISH THAT THEY ARE INDIANS

¶20 Defendants claim to be Indians. We conclude that they are not, as that term has been defined by federal law.

¶21 In the 1846 decision *United States v. Rogers,*[20] the Supreme Court established factors to be evaluated in determining Indian status. Courts, including ours, have concluded that under *Rogers,* in order to claim the status of an Indian, a person must "(1) [have] a significant degree of Indian blood *and* (2) [be] recognized as an Indian by a tribe or society of Indians or by the federal government."[21] Defendants do not meet either of these requirements.

¶22 In applying the *Rogers* factors, we recognized in *Perank* that a person "with less than one-half Indian blood [can qualify as having] a significant degree of Indian blood."[22] However, we have found no case in which a court has held that 1/16th Indian blood, as claimed by defendants, qualifies as a "significant degree of Indian blood."

¶23 Even were we to conclude that 1/16th Indian blood meets the requirement in *Rogers,* defendants would still fail to establish their Indian status. Defendants'

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[20] 45 U.S. (4 How.) 567 (1846); *see State v. Perank,* 858 P.2d 927, 932 (Utah 1992).

[21] *Perank,* 858 P.2d at 932 (emphasis added).

[22] *Id.* at 933.

ancestors, through which they claim Indian blood, were individually listed on the Ute Partition Act final termination roll.[23] In *United States v. Von Murdock*,[24] the United States Court of Appeals for the Tenth Circuit, in addressing the operation and effects of the Ute Partition Act, concluded that an individual born to "parents [who] were listed on the final roll [of the Act]" was "not a member of the Ute Indian Tribe."[25] "'Nor can the children of a terminated [parent] claim membership in the tribe through [that] parent.'"[26] Because Defendants' ancestors lost their legal status as Indians, Defendants have no Indian blood for purposes of being recognized by an Indian tribe or the federal government. They therefore fail the first element of the *Rogers* test.

¶24 Defendants also fail the second element of the *Rogers* test. The Uintah Band, in which they claim membership, is not recognized as a tribe by the federal government. As a consequence, Defendants' claimed membership in that tribe does not help establish their Indian status under federal law. The 10th Circuit directly addressed this impact in *Von Murdock,* saying,

> The [Ute Tribe] Constitution thus makes clear that the Bands ceased to exist separately outside the Ute tribe, that jurisdiction over what was formerly the territory of the Uintah Band was to be exercised by the Ute Tribe, and that the rights formerly vested in the Uintah Band were to be

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[23] 25 U.S.C. § 677.

[24] 132 F.3d 534 (10th Cir. 1997).

[25] *Id.* at 536.

[26] *Id.* (quoting *Chapoose v. Clark,* 607 F. Supp. 1027 (D. Utah 1985)).

> defined by the Ute Constitution and exercised by the Ute Tribe. In light of these provisions, [the] argument that the Uintah Band's hunting and fishing rights retain a separate existence and belong only to the Uintah Band is groundless. Even if . . . the Uintah Band continues to maintain its own identity, under the Ute Constitution the Band does so only within the context of the Ute Tribe.[27]

¶25 This same analysis applies to the defendants in this case. Defendants concede that they are not members of the Ute Tribe. They claim to be members of the Uintah Band or Tribe. However, under federal law, the Uintah Tribe no longer has a separate existence apart from the Ute Tribe. As a result, Defendants do not belong to a federally recognized tribe and are not Indians under federal law.

¶26 We are bound by the determinations of the United States Supreme Court and the *Rogers* decision. Further, we are not at liberty to decide which individuals are or should be "recognized as an Indian" by Indian tribes or the federal government. Such recognition is at the discretion of those entities.[28] We conclude that, under *Rogers,* Defendants have failed to establish that they are Indians. Defendants do not have "a significant degree of Indian blood," nor are they "recognized as . . . Indian[s] by

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[27] *Id.* at 541.

[28] If an individual wishes to establish Indian status before this court, he must seek recognition as an Indian from a recognized Indian tribe. If, as is the case here, an entire tribe seeks to be recognized, the tribe must look to the federal government for recognition. Absent federal approval, we are not in the position to recognize new tribes, and we must, in accordance with *Rogers,* find against Indian status.

a [federally recognized] tribe or society of Indians or by the federal government."[29]

CONCLUSION

¶27 The State has jurisdiction over these defendants. A state has jurisdiction over crimes committed in Indian country when a non-Indian commits a victimless crime. Defendants are not Indians, as that term has been defined by federal law, and the crimes in these cases were victimless. Accordingly, we reverse the decision of the court of appeals and reinstate the convictions.

¶28 Chief Justice Durham, Justice Durrant, Justice Parrish, and Justice Nehring concur in Associate Chief Justice Wilkins' opinion.

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[29] *Perank*, 858 P.2d at 932.

IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Rickie L. Reber, Steven Paul Thunehorst, and Tex William Atkins, Defendants and Appellants.	)	OPINION Case No. 20040371-CA FILED (Nov. 10, 2005)
Ute Indian Tribe, Amicus Curiae.	)	

Eighth District, Vernal Department, 021800320
The Honorable A. Lynn Payne

Attorneys: Michael L. Humiston, Heber City, for Appellants
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake City, for Appellee
Kimberly D. Washburn, Draper, Tod J. Smith, Boulder, Colorado, and Charles L. Kaiser, Charles A. Breer, and Peter J. Hack, Denver, Colorado, for Amicus Curiae

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Before Judges Bench, Davis, and Orme,

BENCH, Associate Presiding Judge:

¶1 Defendant Reber appeals his conviction for one count of aiding or assisting in wanton destruction of protected wildlife, a third degree felony in violation of Utah Code sections 23-20-4 and -23. *See* Utah Code Ann. §§ 23-20-4,

-23 (2003 & Supp. 2005). Defendants Thunehorst and Atkins appeal their conditional pleas of attempted wanton destruction of protected wildlife, a class B misdemeanor. *See id.* We vacate each conviction for lack of state jurisdiction.

BACKGROUND

¶2 During the 2002 deer hunting season in Uintah County, Reber's son shot and killed a large mule deer with Reber's assistance. Later, Reber drove his truck through a Utah Division of Wildlife Resources checkpoint with the trophy buck in the bed of the truck. They did not have a state permit, license, or tag attached to the animal. The State charged Reber with aiding and assisting in the wanton destruction of wildlife. Because Reber's son shot a trophy buck, the crime constituted a third degree felony. *See* Utah Code Ann. § 23-20-4(3)(a). During that same hunting season, Defendant Atkins shot a buck in Uintah County and Defendant Thunehorst assisted him. They were both charged with class A misdemeanors. *See id.* § 23-20-4(3)(b).

¶3 Reber filed a motion to dismiss his case for lack of jurisdiction, claiming that he is an Indian and was hunting in Indian Country. Atkins and Thunehorst stipulated with the State that the district court's ruling on jurisdiction in Reber's case would apply to their respective cases. The district court denied Reber's motion, and the jury convicted him. Atkins and Thunehorst entered conditional pleas to class B misdemeanors. Defendants separately appealed, and the Atkins and Thunehorst appeals were consolidated with the Reber appeal.

ISSUE AND STANDARD OF REVIEW[1]

¶4 Defendants assert that the State lacked jurisdiction. Jurisdiction is a question of law, reviewed for correctness, and we accord no particular deference to the district court's decision. *See Skokos v. Corradini,* 900 P.2d 539, 541 (Utah Ct. App. 1995).

ANALYSIS

¶5 Defendants claim that the State lacked jurisdiction because they are Indians who exercised federally protected rights on Indian land. The Utah Constitution provides:

> The people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.

Utah Const. art. III. Therefore, the federal government has jurisdiction over Indian lands until the Congress of the United States relinquishes such right. *See id.*

¶6 The State of Utah may assert "jurisdiction over Indians and Indian territory, country, and lands or any

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[1] Defendants raise and address other issues not covered in this opinion. Because we conclude that the State did not have jurisdiction, we need not address the other issues.

portion thereof within this state in accordance with the consent of the United States given by the Act of Congress of April 11, 1968, 82 Stat. 78-80 (Public Law 284, 90th Congress), to the extent authorized by that act and this chapter." Utah Code Ann. § 9-9-201 (2003). Utah Code section 9-9-213 provides for concurrent state and federal jurisdiction over hunting on reservations. *See* Utah Code Ann. § 9-9-213 (2003). In order for section 9-9-213 to apply, and thus allow the State to assert jurisdiction, certain preliminary requirements must be met. Pursuant to Utah Code section 9-9-202,

> [s]tate jurisdiction acquired or retroceded pursuant to this chapter with respect to criminal offenses or civil causes of action shall be applicable in Indian country only where the enrolled Indians residing within the affected area of the Indian country accept state jurisdiction or request its retrocession by a majority vote of the adult Indians voting at a special election held for that purpose.

Utah Code Ann. § 9-9-202 (2003). The court in *United States v. Felter*, 752 F.2d 1505, 1508 n.7 (10th Cir. 1985), noted that "[u]nder current law, Indian tribes must consent to any state assumption of jurisdiction over 'Indian Country.' Although Utah since has indicated its willingness to assume this jurisdiction, no Indian tribe has accepted its offer." *Id.* There is no evidence in the record that the Ute Tribe has held an election accepting state jurisdiction. Thus, section 9-9-213, granting concurrent jurisdiction over hunting, cannot apply.

¶7 Both parties agree that the crimes in this case, hunting without a state license, occurred in "Indian Country." "Under 18 U.S.C. § 1151, the Tribe and the

federal government have civil and criminal jurisdiction over 'Indian Country.'" *Ute Indian Tribe v. Utah,* 114 F.3d 1513, 1529 (10th Cir. 1997) (*Ute Tribe V*). Without the election mentioned above, "state jurisdiction over crimes committed in Indian Country is limited to criminal acts committed 'by non-Indians against non-Indians . . . and victimless crimes by non-Indians.'" *State v. Valdez,* 2003 UT App 60,¶4, 65 P.3d 1191 (alteration in original) (quoting *Solem v. Bartlett,* 465 U.S. 463, 465 n.2 (1984)). If either the defendant or the victim is an Indian, then jurisdiction lies with the tribal or federal courts. *See Valdez,* 2003 UT App 60 at ¶4. Because we hold that the victim in this case is the Ute Indian Tribe, we need not address whether Defendants are Indians. *See id.*

¶8 "The current Uintah and Ouray Reservation is formed from portions of two prior reservations, the Uintah Valley Reservation, which was originally inhabited by the Uintah and Whiteriver Bands of Ute Indians, and the Uncompahgre Reservation, which was originally inhabited by the Uncompahgre Band." *United States v. Von Murdock,* 132 F.3d 534, 540 (10th Cir. 1997). "In 1937, . . . the three Bands joined together to form the Ute Indian Tribe of the Uintah and Ouray Reservation, and adopted a constitution and bylaws." *Id.* (footnote omitted). In 1950, representatives from each of the Bands "signed a series of five tribal resolutions which completed the transition, which began with the constitution, from loosely-knit Bands to [the] unified Ute Tribe." *Hackford v. Babbitt,* 14 F.3d 1457, 1461 (10th Cir. 1994). The constitution specified that the separate Bands ceased to exist outside the Ute Tribe, and the Ute Tribe maintained jurisdiction over the reservation

areas and the hunting and fishing rights.[2] *See Von Murdock,* 132 F.3d at 541.

¶9 The State asserts that it was the victim in this case, and because the State is not an Indian, state courts have jurisdiction over the offense. The State, however, is not the victim. The State concedes in its brief that the crime took place "in Uintah County on land that was within the original boundaries of the Uncompahgre Reservation and is 'Indian Country.'" There were disputes as to whether the 1894 and 1897 Acts of Congress disestablished the Uncompahgre Reservation. *See Ute Indian Tribe v. Utah,* 773 F.2d 1087, 1090-93 (10th Cir. 1985) (*Ute Indian Tribe III*). In *Ute Indian Tribe III,* however, the court held that the acts did not "disturb the ownership of the land by the tribal group." *Id.* at 1092. The original Uncompahgre Reservation is therefore considered Indian Country, which falls under the Ute Tribe's civil and criminal jurisdiction. *See Ute Indian Tribe V,* 114 F.3d at 1530 (confirming *Ute Indian Tribe III* that the tribe and federal government retained jurisdiction over the Uncompahgre Reservation). Thus, Defendants shot the deer in Indian Country governed by the Ute Tribe.

¶10 Alternatively, the State asserts that the crime is victimless. A victimless crime is a "[t]erm applied to a

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[2] The original reservation "was created by executive order and approved by an act of Congress." *Timpanogos Tribe v. Conway,* 286 F.3d 1195, 1202 (10th Cir. 2002) (footnote omitted). The act set apart the Uintah Valley for "the permanent settlement and exclusive occupancy of Utah Indian tribes [and] recognized and guaranteed the Indian rights of the tribes who settled there." *Id.* Those rights include the right to hunt. *See id.* ("'As a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them. . . .'" (citation omitted)).

crime which generally involves only the criminal, and which has no direct victim, as in the crime of illegal possession of drugs." Black's Law Dictionary 1085 (6th ed. 1991). For purposes of Indian law, it has been emphasized that victimless crimes must be "truly victimless." William C. Canby, Jr., *American Indian Law* 166 (3d ed. 1998). "Crimes against Indian property interests are not victimless even though no Indian person is directly assaulted; Indian interests are affected and that fact places the crime within the exclusive jurisdiction of the federal government." *Id.*

¶11 "The right to hunt and fish on reservation land is a long-established tribal right." *United States v. Felter,* 752 F.2d 1505, 1509 (10th Cir. 1985). Additionally, "'[a]side from the right to hunt or fish on tribal lands to the exclusion of others, the tribe possesses the discretion inherent in the police power to regulate and allocate the fish and game resources as it sees fit, within the constraints imposed by law.'" *Id.* at 1511 (quoting *United States v. Felter,* 546 F.Supp. 1002, 1023 (D. Utah 1982)). Thus, the Ute Tribe has a regulatory interest over hunting and fishing on the land it governs. Because Defendants' acts of hunting on Indian Country affected the Ute Tribe's regulatory interest, the tribe is the victim.[3]

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[3] An argument might also be made that the Ute Tribe had a property interest in the wildlife. In *United States v. Von Murdock*, 132 F.3d 534 (10th Cir. 1997), the court stated that "'[t]ribal rights in property are owned by the tribal entity, . . . including hunting and fishing rights.'" *Id.* at 538 (quoting *United States v. Felter*, 546 F.Supp. 1002, 1021 (D. Utah 1982)). In Utah Code section 9-9-211, our legislature recognized a property right, noting that when a person goes on an Indian reservation and participates in hunting without proper authority then all "game . . . in the defendant's possession shall be forfeited to

(Continued on following page)

¶12 In holding that the defendant in *Von Murdock* was not an Indian, the 10th Circuit court asserted jurisdiction and affirmed the conviction for violating 18 U.S.C. § 1165, which prohibits hunting on land belonging to an Indian tribe without permission. *See Von Murdock,* 132 F.3d 534 (10th Cir. 1997). Likewise, in *Felter,* the court found that because the defendant no longer maintained Indian status, the federal court could assert jurisdiction rather than the tribal court. *See Felter,* 752 F.2d 1505. The *Felter* court noted "that 18 U.S.C. § 1165 is not applicable to tribal members who hunted in violation of tribal regulation. Tribal jurisdiction over such minor offenses remains exclusive." *Id.* at 1512 n.11 (quoting *Felter,* 546 F.Supp. at 1026). It remains clear, however, that "Indian tribes lack jurisdiction to try and punish non-Indians for criminal offenses, and [thus,] 18 U.S.C. § 1165 was designed to fill the gap in enforcement powers as to non-Indians hunting or fishing on tribal or other Indians lands without tribal permission." *Id.* The *Felter* court thus reasoned that an Indian hunting on Indian lands is under tribal jurisdiction, but a non-Indian hunting on Indian lands is under federal jurisdiction. Nothing in *Von Murdock* or *Felter*

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the tribe." Utah Code Ann. § 9-9-211 (2003). Similarly, pursuant to its jurisdiction over the land, the Ute Tribe claims a property interest in the wildlife. Section 8-1-3(1) of the Ute Law and Order Code states:

> All wildlife now or hereafter within the Uintah and Ouray Reservation, not held by private ownership legally acquired, and which for purposes of this Code shall include all big game animals . . . are hereby declared to be the property of the Ute Indian Tribe.

Ute Law and Order Code § 8-1-3(1); *cf.* Utah Code Ann. § 23-13-3 (2003) ("All wildlife existing within this state, not held by ownership and legally acquired, is the property of the state.").

suggests that state courts can ever assert jurisdiction over hunting violations committed on Indian lands.

CONCLUSION

¶13 We conclude that the crimes occurred in Indian Country governed by the Ute Tribe. Because the Ute Tribe is the victim, the State does not have jurisdiction. We therefore vacate the convictions.

Russell W. Bench
Associate Presiding Judge

¶14 WE CONCUR:

James Z. Davis, Judge

Gregory K. Orme, Judge

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest of C.R., a person under eighteen years of age.	MEMORANDUM DECISION (Not for Official Publication)
C.R., Appellant, v. State of Utah, Appellee.	Case No. 20040281-CA FILED (November 10, 2005)

Eighth District Juvenile, Vernal Department, 170075
The Honorable Larry A. Steele

Attorneys: Michael L. Humiston, Heber City, for Appellant
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake City, for Appellee

Before Judges Bench, Davis, and Orme.

BENCH, Associate Presiding Judge:

Appellant C.R. appeals a juvenile court judgment of wanton destruction of protected wildlife, a third degree felony if committed by an adult, in violation of Utah Code Section 23-20-4. *See* Utah Code Ann. § 23-20-4 (Supp. 2005). Among other issues, C.R. asserts that the State did not have jurisdiction over this case because he was hunting in Indian Country. "Whether the juvenile court had jurisdiction is a question of law which we review under a

correction of error standard." *Department of Human Servs. v. B.R.*, 2002 UT App. 25, ¶ 6, 42 P.3d 390 (quotations and citations omitted).

The facts of this case are, in all relevant respects, identical to the facts in *State v. Reber*, 2005 UT App 485. In that case, this court held that the State lacked jurisdiction to prosecute a violation of section 23-20-4 when committed in "Indian Country." *See id.*

As in *Reber*, we vacate the judgment in this case for lack of jurisdiction.

/s/ Russell W. Bench
Russell W. Bench,
Associate Presiding Judge

/s/ James Z. Davis
James Z. Davis, Judge

/s/ Gregory K. Orme
Gregory K. Orme, Judge

[SEAL] **EIGHTH DISTRICT JUVENILE COURT**
UINTAH COUNTY, STATE OF UTAH

920 East Hwy 40	255 S. State St.	21554 W 9000 S
Vernal, UT	PO Box 1286	PO Box 990
84078	Roosevelt, UT	Duchesne, UT
(435) 789-9335	84066	84021
	(435) 722-0235	(435) 738-0105

STATE OF UTAH, in the interest of	**ORDER**
COLTON REBER	**Case Number:** 170075
DOB: 07/07/2007 [sic] [12/30/88]	
Person(s) under eighteen years of age	

This matter came before the Court for Trial on the above matter this 15th day of March, 2004. Present was the above minor, his father, mother, and counsel, Mr. Mike Hummiston [sic]; Mr. Ed Peterson, Deputy County Attorney and a number of witnesses and spectators.

Ed Johnson, Officer Terry Smith, and Johnny Reber were called as witnesses.

The minor renewed his objection to the jurisdiction of this Court. The issue of jurisdiction has been previously ruled upon.

The minor objected to the amended information. The information was amended to include that the animal was a trophy animal because the rack was over 24 inches. The Court invited the minor to demonstrate wherein he would be prejudiced by the amendment. He had notice of the statutory provision cited in the prior Information. The deer antlers were available for examination by the minor and counsel. Counsel had even stipulated to the width of the antlers being greater than 24 inches. The Court found

there was no prejudice in proceeding with the amended Information.

The Court offered to further consider any prejudice which the minor may identify during the trial and reconsider the motion or bifurcate the proceedings and give the minor additional time to prepare to present any additional evidence or matters. After the trial began, there was no discussion of further prejudice and no request to bifurcate or for additional time to present further evidence or matters.

Having heard such oral testimony as the parties chose to introduce; examined the exhibits; heard oral argument, the Court makes the following findings, based on the credible evidence and the reasonable inferences to be drawn therefrom. The Court makes each of these findings beyond a reasonable doubt:

On or about October 27, 2004, Ed Johnson, a biologist of 17 years for the State of Utah, Division of Wildlife Resources, was doing a chronic wasting disease study for deer at Duck Rock which is at the end of the pavement at the south end of Bonanza Highway within Uintah County. A green Chevrolet or GMC pickup with license # 473JFN stopped and the occupants spoke to him. In the back of the vehicle was a buck Mule deer which had large 3 point antlers. Mr. Johnson was familiar with Utah game licenses and tags. This deer did not have a tag or permit. Mr. Johnson asked the vehicle to follow him into the Vernal office of Wildlife Resource Services. He met up with Officer Terry Smith at the intersection of Highway 40 and the Bonanza Highway and continued along with Officer Smith following into the Vernal office. He never lost sight of the deer until Officer Smith took custody of the animal

in Vernal. Officer Smith is a Conservation Officer for the Division of Wildlife Resources and has been an officer for 16 years.

Officer Smith took custody of the deer, removed and put an evidence tag on the antlers, which antlers have been in his continuous custody or in evidence lockers under his control ever since October 27, 2002. The antlers were admitted into evidence as Exhibit 1. The parties stipulated a photograph shall be substituted for the antlers. The parties stipulated that the "antlers which were attached to the buck mule deer taken by Officer Terry Smith from the vehicle in which the Defendant was an occupant on the 27th day of October 2002 have an outside antler measurement of 24 and ¾ inches." Mule deer such as the one taken are protected wildlife. A deer, such as this one, having a rack over 24 inches wide is a trophy animal.

After arriving at the vernal office, Officer Smith spoke to all occupants of the green pickup, Colton Reber; his father, Rickie Reber; his uncle, Johnny Reber; and Johnny's grandson, Quintin Huber. Colton stated to Officer Smith that this was his first deer. Officer Smith did not include this admission in his report. Mr. Rickie Reber stated that his son, Colton, had shot the deer at about 5:00 PM that day. The father stated that the deer was killed just east of Bitter Creek and the King's Well Road. Mr. Reber stated to Officer Smith that he and his son had gone out hunting and his son, Colton, had killed his first deer. He was out there to assist Colton hunt and was in the process of transporting the deer back to his brother's house. They were in his brother's truck.

The conversation with Mr. Reber and son, Colton, took place approximately 8:00 PM in the evening on October 27, 2002. The condition of the deer was consistent with the time of the kill and was consistent with the manner in which Mr. Reber indicated the deer had been killed. Officer Smith is familiar with the boundaries of Uintah County within the State of Utah and the area just east of Bitter Creek on King's Well Road is within Uintah County. Officer Smith is familiar with the road all the way to Duck Rock (15-20 miles) all of which is within Uintah County.

The hunters were not "100% sure" if they were legal or not, but argued that they had a right to hunt there. They did not have a Utah permit. They did present a paper which said "Timpanogas Tribe Subsistence Hunt 2002". The hunters stated they were members of the Timpanogas Tribe.

The uncle, Johnny Reber, was present during the hunt, but did not have Colton and Rickie always in sight. He did not see Colton shoot the deer, but when he caught up with Colton and Rickie, they had the deer and there was blood on Colton and Rickie from cleaning and transporting the deer.

The State asked the Court to make findings required by *Utah vs. Payne*, 892 Pd 1032 (Utah 1995). The offense occurred within the exterior boundaries of the State of Utah. The offense occurred within Uintah County. The offense and required elements of the offense occurred outside the boundaries of the Ute Indian reservation and any other Indian reservation. As previously ruled, the minor would have 1/32 Indian blood, not a sufficient degree to make the minor an "Indian" for the purposes of jurisdiction. The area in question is not within an area

over which an Indian tribe or the Federal Government has exclusive jurisdiction. The area in question is an area over which the State of Utah has jurisdiction.

The evidence was, for the most part, un-rebutted. The testimony of Johnny was presented and was argued by minor's counsel to raise a question as to who killed the deer. The testimony that Johnny did not keep Colton in sight and never saw Colton kill the deer, does little to rebut other evidence that Colton did kill the deer. Johnny also testified that when he returned to the father and Colton, they had the deer and had blood on them. The Court credits the testimony of Ed Johnson and Officer Terry Smith. In evaluating their testimony, the Court found them to be candid, truthful and largely un-rebutted. Officer Smith didn't include Colton's admission in his report, but he did include the father's admission. It appears to have been generally accepted, who killed the deer, Colton, the primary question and discussion related to jurisdiction.

The above minor, Colton Reber, on or about the 27th Day of October, 2002, in Uintah County, State of Utah, did commit Wanton Destruction of Protected Wildlife, an act in violation of UCA §23-20-4 and Section 23-20-3(1), a third degree felony, by shooting, injuring, killing, taking, possessing and transporting protected wildlife. Colton possessed protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice. Colton did so with intention, knowing, or reckless conduct. It was Colton's conscious objective or desire to engage in the conduct and cause the result. It was his first deer. The protected wildlife, the deer, which was captured, injured or destroyed was a trophy animal.

The parties disagreed on the degree to which the minor must know of the wrongfulness of his conduct to form the requisite intent. Nothing in the definition of "willful" requires scienter. Willful, when applied to the intent with which an act is done or omitted, implies a willingness to commit the act. It does not require an intent to violate the law or to injure another or acquire any advantage. State v. Larsen, 865 P.2d 1355 (Utah 1993). When more is required, the legislature so states, for example:

> *UCA 23-20-27.* Alteration of license, permit, tag or certificate a misdemeanor. Any person who at any time alters or changes in any manner, *with intent to defraud*, any license, permit, tag or certificate of registration issued under the provisions of this code or action of the Wildlife Board is guilty of a misdemeanor.

IT IS THEREFORE ORDERED, that the minor did commit wanton destruction of protected and trophy wildlife in violation of UCA §23-20-4 and Section 23-20-3(1), a third degree felony. The disposition or sentencing will be stayed for a period of thirty (30) days within which time the minor may file a written notice of appeal. If appealed, the disposition will be stayed pending the outcome of the appeal. If the matter is not appealed, a dispositional hearing shall be set after thirty (30) days has elapsed. This matter was transferred to the Eighth District Juvenile Court for "adjudication and disposition". If and when appropriate, disposition will occur in the Eighth District rather than in the First District Juvenile Court.

Filed: March 19, 2004
By: Amorette Oldroyd
Copy mailed, First Class, postage prepaid:
To: Ed Peterson
Michael L. Humiston
Rickie Reber

By: Amorette Oldroyd
On: March 19, 2004

Dated: 3-18-04

BY THE COURT

/s/ L. Steele [SEAL]
JUDGE LARRY A. STEELE

IN THE EIGHTH JUDICIAL DISTRICT COURT IN AND FOR UINTAH COUNTY, STATE OF UTAH

STATE OF UTAH Plaintiff, vs. RICKIE L. REBER, Defendant.	**RULING AND ORDER** Case No.: 021800320 (Filed Jan. 21, 2004)

The Court has reviewed the Defendant's pleading entitled "Witness Re: Reliance Upon Written Court Opinion, U.C.A. §76-2-304, as well as the pleadings relating to the Plaintiff's objection to the proposed witnesses. The Defendant alleges that he was acting in reliance upon a written interpretation of the law as contained in the following Tenth Circuit Court of Appeals cases: *Ute Indian Tribe of Uintah and Ouray Reservation v. Utah*, 114 F. 3d 1513; and *Timpanogos tribe v. Conway*, 286 F.2d 1195. To support his defense of ignorance or mistake of law, Defendant proposes to call the Appellate Court Judges who wrote the opinion of the Court in the above cases (to explain the case); a professor of law (to explain principles of Indian law); the Uintah County Recorder (to verify the location of the offense); the Chief Executive Officers of the "Timpanogos Tribe" (to explain the rights which the "Timpanogos Tribe" seeks to exercise in *Timpanogos v. Conway*); a senior member of the Uintah Band (to explain the history and traditions of Indians of Utah Territory and the history of litigation involving Indians of Utah Territory); and an "Indian of Utah Territory" (to explain Indian culture and religion and the government of the Uintah Band); an enrolled member of the Uncompahgre Band and

former member of the Ute Tribe Business Committee (to explain the historical separate existence of Uintah Band, to explain the rights retained by the Uintah Band and explain all relevant written laws and resolutions); and, a retired law professor (to explain the archeological, ethnological, and linguistic evidence connecting the Uintah Bank with Shoshone Indians).

Our Rules of Evidence indicate that "All relevant evidence is admissible . . . " rule 402 U.R.E. "Relevant evidence" is defined as evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401 U.R.E. Our statutes also provides (1) "In a jury trial, questions of law are to be determined by the Court . . . (2) The jury – are bound to follow the law as stated by the Court" 77-17-10(c) U.C.A. Rule 19 of the Utah Rules of Criminal Procedure also mandates that the court instruct the jury in writing at the conclusion of the evidence.

The above witnesses are offered as witnesses concerning the Defendant's defense of Ignorance or mistake of law under U.C.A. 76-2-34(2)(b). That section states:

"(2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless: . . .

(b) His ignorance or mistake resulted from the actions reasonable reliance upon:

(i) The official statement of the law contained in a written order or grant of permission by an administrative agency changed by law with responsibility for interpreting the law in question; or of the law contained in an opinion of a Court of record or made by a

public servant charged by law with responsibility for interpreting the law in question; or

(ii) A written interpretation of the law contained in an opinion of a Court of record or made by a public servant charged by law with responsibility for interpreting the law in question."

Defendant has now abandoned his original claim that the permit he showed the officers at the scene (which was issued by the "Timpanogos Tribe") was a valid license which allowed the permittee to hunt wildlife. He now claims that, although the permit was not valid, at the time, he reasonably believed that it was valid. Alternatively at various times, Defendant has indicated that he was entitled to hunt without a permit issued by the State either:

(1) Because he is a descendant of a terminated Ute and has inherited hunting privileges from his mother; or

(2) Because he was alive at the time that the Termination Proclamation was issued and was not listed on the proclamation; and therefor has maintained rights to hunt; or

(3) Because he is an aboriginal Indian of Utah Territory who retains aboriginal hunting rights.

In its prior order this Court has ruled that hunting and fishing rights can not be inherited; that the Defendant's Indian status was terminated when his mother was listed on the Termination Proclamation; and, because he is 93.75% non-Indian, he does not possess a significant quantum of Indian blood and is not entitled to Indian status under *U.S. v. Rogers*, 45 U.S. (4 How.) 567. It is therefore apparent to the Court that in order for the

Defendant to raise the defense of mistake of law based upon the 10th Circuit opinions, he must introduce evidence that:

(1) He actually read the opinions or was informed of the decisions in a manner which could support reasonable reliance (if indeed one can ever reasonably rely upon hearsay concerning the contents of an opinion); and

(2) The holding in at least one of the cases was either:

(A) The "Timpanogos Tribe has legal authority to issue permits to take wildlife; or

(B) Descendants of terminated Utes, inherit their terminated parents rights to hunt wildlife; or

(C) Children of terminated Utes who were alive at the date of the Termination Proclamation, who were not listed on the proclamation, maintain rights to hunt; or

(D) A person who is only 6.25% Indian has a significant quantum of Indian blood under *Rogers*; and,

(3) He relied upon the holding in acting or failing to act; and

(4) His reliance on the holding was reasonable.

The court has carefully read each of the cases relied upon by the Defendant. *Timpanogos Tribe v. Conway* decided two narrow procedural issues: (1) Whether the Federal District Court had jurisdiction to consider the "Timpanogos Tribe's" claims; and (2) Whether the State of Utah was entitled to a dismissal under 12(b)(6) (Federal rules of Civil Procedure) for failure to state a claim of action based upon immunity of the State under the Eleventh

Amendment. The Court held that the fact that the "Timpanogos Tribe" was not recognized as an Indian Tribe by the Federal Government did not deprive the District Court of jurisdiction; and that, because the Plaintiffs only requested prospective injunctive relief, the State was not entitled to a 12(b)(6) dismissal based upon immunity under the Eleventh Amendment.

Ute Indian Tribe v. State of Utah is an attempt by the Tenth Circuit Court of Appeals to resolve conflicts between its prior holding in *Ute Indian Tribe v. Utah*, 773 F.2d 1087 and the United States Supreme Court's decision in *Hagen v. Utah*, 510 U.S. 399. The case addresses the issues of the boundaries of the Uintah Valley Reservation in light of the foregoing decisions. No issue relative to this case was considered by the Court.

For the purpose of considering the issue of the Defendant's Indian status, the State has indicated that it will concede that the offense occurred within Indian Country. Even assuming that the offense occurred within Indian Country, the Court has previously ruled that the Defendant does not have Indian status and that the Court has jurisdiction. Therefore, in order to advance its defense the Defendant must point to language in one of the cases which would reasonably lead the Defendant to believe one of the alternatives listed in (2)(A) through (D) above.

Neither of the cases which the Defendant relies upon held that: "The Timpanogos Tribe" has legal authority to issue hunting permit; or, children of terminated Utes inherit hunting rights; or, children of terminated Utes who were alive at the date of the Termination Proclamation retain hunting rights; or, a person who is 6.25% Indian has a significant quantum of Indian blood under *U.S. v.*

Rogers. Therefore, the Defendant can not advance a defense of ignorance or mistake of law based upon either case. It would be unreasonable as a matter of law for the Defendant to read either or both of these cases and conclude that the "Timpanogos Tribe" had legal authority to issue a permit, or that he was entitled to hunt based upon any of the various theories which are based upon his claimed Indian Status, or that he had a right to hunt based upon a permit issued by the "Timpanogos Tribe".

In addition, it is apparent that the proposed testimony is not relevant to the defense of ignorance or mistake of law and that some of the testimony is improperly offered to instruct the jury as to the law. The defense of ignorance or mistake of law requires reasonable reliance upon a written decision of a Court of record. The reliance can be based only on the written opinion: "The language of Section 76-2-304 clearly and unambiguously requires a written interpretation, by either a Court of Record or a public servant, in order for mistake of law to be an available defense." (*State v. Norton*, 67 P.3d 1050 at 1053). The opinions which the Defendant relies upon were opinions of a panel of Judges. Each opinion is what it is; the opinion of the panel can not be added to or subtracted from through parol evidence from one of its members. The law expressly requires that the reliance must be based on the opinion itself not some subsequent explanation of the opinion from a panel member. Similarly, it would be inappropriate to allow a professor of law to testify as to general principles of law upon which Indians routinely rely. The defense is specifically tied to written opinions issued by a Court of record, not general principles of law. The Defendant seeks to present evidence regarding: the purpose of the Timpanogos Tribe in bringing the lawsuit and the rights they

seek to enforce; Indian history and tradition; Indian culture and religion; the separate existence of the Uintah Band and the rights of its members; the laws and resolutions of the Uintah Band; and the archeological, ethnological, and linguistic connection to the Shoshone Tribe; However, none of this testimony is relevant to the written opinion upon which Defendant relies. Neither is the testimony of Mr. Simmons concerning the location of the alleged crime.

Based upon the above, the Court finds that the proposed testimony is not relevant because it does not have any tendency to make it more probable or less probable that the Defendant relied upon either 10th Circuit case. The Court will also find as a matter of law that the Defendant could not reasonably rely upon either *Timpanogos Tribe v. Conway* or *Ute Indian Tribe v. Utah* to advance his defense of ignorance or mistake of law.

DATED this 20 day of January, 2004.

BY THE COURT:

/s/ A. Lynn Payne
A. LYNN PAYNE,
DISTRICT COURT JUDGE

IN THE EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF UINTAH, STATE OF UTAH

STATE OF UTAH Plaintiff, vs. RICKIE L. REBER, Defendant.	**RULING** Case No. 021800320 FS (Filed Nov. 10, 2003)

This Court has received under certification from the trial court judge the Defendant's Motion to Disqualify.

After fully reviewing the file, and within the provisions of Rule 29(c)(2) U.R.Cr.P., the Court finds that based upon the allegations supported by affidavit for the Motion to Disqualify that bias and prejudice, if any, that is alleged was known by the affiants prior to the court's ruling on the question of jurisdiction. Since Rule 29(c) requires the motion to disqualify to be filed at least within 20 days of (a) the assignment of the action or hearing to the judge, (b) the appearance of the party or the party's attorney, or (c) the date on which the moving party learns or with exercise of reasonable diligence should have learned of the grounds upon which the motion is based are all adequately and woefully late. The parties in this case have adequately and knowledgeably presented the arguments for determining jurisdiction when the Defendant has claimed to be an Indian. Those matters have been adequately briefed, well argued, and the trial court's ruling seems to be well supported in the case law.

It would seem that the Defendant has waited to disqualify the judge until almost eleven months after this

case was filed when he obtained an unfavorably ruling. Therefore, the matter will be returned to the trial judge. The Motion to Disqualify is hereby denied.

DATED this 10th day of November, 2003.

BY THE COURT:

/s/ John R. Anderson
John R. Anderson
Eighth District Court Judge

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest of C.R., a person under eighteen years of age.	)	
C.R.,	)	
Appellant,	)	ORDER
v.	)	Case No. 20040281-CA
State of Utah,	)	(Filed Mar. 2, 2006)
Appellee.	)	

This matter is before the court upon Appellee's petition for rehearing, filed December 23, 2005.

Now, therefore, IT IS HEREBY ORDERED that the petition for rehearing is denied.

Dated this 2nd day of March, 2006.

FOR THE COURT:

/s/ Russell W. Bench
Russell W. Bench,
Presiding Judge

IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Rickie L. Reber, Steven Paul Thunehorst, and Tex William Atkins, Defendants and Appellants.	ORDER Case No. 20040371-CA (Filed Mar. 2, 2006)
Ute Indian Tribe, Amicus Curiae.	

This matter is before the court upon Appellee's petition for rehearing, filed December 23, 2005.

Now, therefore, IT IS HEREBY ORDERED that the petition for rehearing is denied.

Dated this 2nd day of March, 2006.

FOR THE COURT:

/s/ Russell W. Bench
Russell W. Bench,
Presiding Judge

Ute Partition Act, Act of August 27, 1954, ch. 1009, 68 Stat. 868.

25 U.S.C. §677. Purpose

The purpose of this Act is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property.

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25 U.S.C. §677d. Restriction of tribe to full-blood members after publication of final rolls; non-interest of mixed blood members; new membership

Effective on the date of publication of the final rolls as provided in section 8 hereof [25 U.S.C. §677g] the tribe shall thereafter consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in this Act. New membership in the tribe shall thereafter be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder.

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25 U.S.C. §677g. Membership rolls of full-blood and mixed-blood members; preparation and initial publication; appeal from inclusion or omission from rolls; finality of determination; final publication; inheritable interest; future membership

The tribe shall have a period of thirty days from the date of enactment of this Act in which to prepare and submit to the Secretary a proposed roll of the full-blood members of the tribe, and a proposed roll of the mixed-blood members of the tribe, living on the date of enactment of this Act. If the tribe fails to submit such proposed rolls within the time specified in this Act, the Secretary shall prepare such proposed rolls for the tribe. Said proposed rolls shall be published in the Federal Register, and in a newspaper of general circulation in each of the counties of Uintah and Duchesne in the State of Utah. Any person claiming membership rights in the tribe, or an interest in its assets, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication in the Federal Register, or in either of the papers of general circulation, as hereinbefore provided, which publication date is last, may file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from either of such proposed rolls. The Secretary shall review such appeals and his decision thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, and after all transfers have been made pursuant to section 4 hereof [25 U.S.C. §677c] the roll of the full-blood members of the tribe, and the roll of the mixed-blood members of the tribe, shall be published in the Federal Register, and such rolls shall be final for the purposes of this Act, but this Act shall not be construed as granting any inheritable interest in tribal assets to full-blood members of the tribe or as preventing future membership

in the tribe, after the date of enactment of this Act, in the manner provided in the constitution and bylaws of the tribe.

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25 U.S.C. §677r. Indian claims unaffected.

Nothing in this Act shall affect any claim heretofore filed against the United States by the tribe, or the individual bands comprising the tribe.

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25 U.S.C. §677v. Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws

Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

Preamble, Ute Constitution

We, the Ute Indians of the Uintah, Uncompahgre and Whiteriver Bands hereafter to be known as the Ute Indian Tribe of the Uintah and Ouray Reservation, in order to establish a more responsible tribal organization, promote the general welfare, encourage educational progress, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of home rule, not inconsistent with the Federal, State and local laws, do ordain and establish this Constitution for the Ute Indian Tribe of the Uintah and Ouray Reservation.

Article III, §2

The Tribal Business Committee shall consist of six members, two (2) members duly elected from each of the three (3) bands of the Ute Indian Tribe of the Uintah and Ouray Reservation, known as the Uintah, Uncompahgre and Whiteriver Bands.

Article VI, §1, Ute Constitution

The Tribal Business Committee of the Uintah and Ouray Reservation shall exercise the following powers, subject to any limitation imposed by the statutes or the Constitution of the United States.

Article VI, §4, Ute Constitution

Any rights and powers heretofore vested in the Tribe or bands of the Uintah and Ouray Reservation but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the

people of the Uintah and Ouray Reservation through the adoption of appropriate By-laws and constitutional amendments.

Section 76-2-304(2), Utah Code Annotated (1953, as amended)

Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless

(a) Due to his ignorance or mistake, the actor reasonably believed his conduct did not constitute an offense, and

(b) His ignorance or mistake resulted from the actor's reasonable reliance upon:

(i) An official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(ii) A written interpretation of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.

114 F.3d 1513 (10th Cir. 1997)

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, Plaintiff-Appellee,

v.

STATE OF UTAH; Duchesne County, a political subdivision of the State of Utah; Roosevelt City, a municipal corporation; Duchesne City, a municipal corporation; Uintah County, a political subdivision of the State of Utah, Defendants-Appellants,

and

United States of America, Amicus Curiae.

No. 96-4073.

United States Court of Appeals,
Tenth Circuit.

May 8, 1997.

[1515] John W. Andrews, Assistant Attorney General (Jan Graham, Attorney General, Carol Clawson, Solicitor General, Reed Richards, Chief Deputy Attorney General, and Michael M. Quealy, Assistant Attorney General, with him on the brief), Office of the Attorney General for the State of Utah, Salt Lake City, UT, for Defendant-Appellant State of Utah.

JoAnn B. Stringham, Uintah County Attorney, Vernal, UT, on the briefs, for Defendant-Appellant Uintah County.

Herbert W. Gillespie, Duchesne County Attorney, Roosevelt, UT, on the briefs, for Defendant-Appellant Duchesne County.

Robert S. Thompson, III, General Counsel, Ute Indian Tribe, Fort Duchesne, UT (Sandra Hansen, Deputy General Counsel, Ute Indian Tribe, Fort Duchesne, UT, and

Tod J. Smith, Whiteing & Smith, Boulder, CO, with him on the brief), for Plaintiff-Appellee.

Robert L. Klarquist, U.S. Attorney (Lois J. Schiffer, Assistant Attorney General, Edward J. Shawaker, U.S. Attorney, and Curtis G. Berkey, U.S. Attorney, with him on the brief), Department of Justice, Washington, DC, appearing for amicus curiae United States of America.

Before TACHA, GODBOLD,* and HOLLOWAY, Circuit Judges.

TACHA, Circuit Judge.

* * *

[1528] **III. Jurisdictional Boundaries After *Hagen***

In determining the parties' respective jurisdictional boundaries after *Hagen* [*Hagen v. Utah*, 510 U.S. 399, 114 S.Ct. 958, 127 L.Ed.2d 252 (1994)], we begin by identifying the areas where *Ute Indian Tribe III* [*Ute Indian Tribe v. Utah*, 773 F.2d 1087 (10th Cir. 1985) (en banc)] and *Hagen* are not in conflict and can be reconciled. To the extent that the boundary determinations made in *Ute Indian Tribe III* do not directly conflict with *Hagen,* they remain in effect.

In *Ute Indian Tribe IV* [*Ute Indian Tribe v. Utah*, 935 F.Supp. 1473 (D.Utah 1996)], the 1996 district court opinion, the court fully addressed the areas of genuine conflict between *Ute Indian Tribe III* and *Hagen.* In large part, we need look no further than the district court's detailed opinion to determine those portions of the original Uintah Valley Reservation that remain the exclusive

* The Honorable John C. Godbold, Senior Circuit Judge, United States Court of Appeals for the Eleventh Circuit, sitting by designation.

province of the Tribe and the federal government. *See Ute Indian Tribe IV,* 935 F.Supp. at 1485-1505. In sum, we agree with the district court that *Hagen* did not effectively overrule the entire judgment in *Ute Indian Tribe III,* including our holdings concerning the National Forest Lands and the Uncompahgre Reservation. Further, we agree that *Hagen*'s only effect was to reduce (and not terminate) the boundaries of the Uintah Valley Reservation to the extent that lands within the Reservation were unallotted, opened for settlement under the 1902-1905 legislation, and not thereafter returned to tribal ownership. Accordingly, we hold that our prior judgment in *Ute Indian Tribe III* should be, and is now, modified to the extent that lands within the original reservation boundaries were unallotted, opened to non-Indian settlement under the 1902-1905 legislation, and not thereafter returned to tribal ownership. [5]

A. The Uintah Valley Reservation, The Uncompahgre Reservation, and the National Forest Lands

In *Ute Indian Tribe III,* we decided three reservation diminishment issues. First, we concluded that the 1902-1905 allotment legislation did not have the effect of diminishing or disestablishing the Uintah Valley Reservation. *Ute Indian Tribe III,* 773 F.2d at 1089. Second, we concluded that the withdrawal of the National Forest Lands did not diminish the Uintah Valley Reservation. *Id.*

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[5] Because we depart from a mandate of the en banc court and modify the earlier judgment in this case, we have circulated this opinion to the en banc court pursuant to our rules. Each member of the en banc court has concurred in our holding.

at 1090. Finally, we held that the 1894 and 1897 allotment legislation did not diminish or disestablish the Uncompahgre Reservation. *Id.* at 1093.

Hagen dealt only with the first of these three issues. As the district court stated:

> *Hagen* determined "that the Uintah Indian Reservation has been diminished by Congress," *i.e.*, that the original boundary of the Uintah Valley Reservation does not currently define the present territorial extent of federal, state and tribal jurisdiction in the Uintah Basin.

Ute Indian Tribe IV, 935 F.Supp. at 1484 (citing *Hagen,* 510 U.S. at 419-21, 114 S.Ct. at 969-70). The district court continued:

> *Hagen* [did not] address the Tenth Circuit's determination in [*Ute Indian Tribe III*] that the 1905 national forest withdrawals of approximately 1,010,000 acres of reservation land did not diminish the Uintah Reservation boundaries. *Hagen* also makes no ruling concerning the boundaries of the Uncompahgre Reservation, the original extent of which was reaffirmed by the Tenth Circuit.

Id. at 1485.

Although the state and local defendants admit that *Hagen* did not address the status of the Uncompahgre Reservation or the National Forest Lands, they assert that we should nevertheless recall our entire mandate in *Ute Indian Tribe III.* The defendants argue that *Hagen* effectively overruled the fundamental premise upon which the entire holding of *Ute Indian Tribe III* was based – namely, that statutory restoration language is insufficient to infer

diminishment. They point out that in *Hagen* the Supreme Court stated that "restoration of unallotted reservation lands to the public domain evidences a congressional intent with respect to those lands inconsistent with the continuation of reservation status." 510 U.S. [1529] at 414, 114 S.Ct. at 967. The state and local defendants argue that in light of this statement, *Ute Indian Tribe III*'s holding concerning the National Forest Lands and the Uncompahgre Reservation cannot stand because the entire holding was based on a misreading of the same congressional restoration language that was at issue in *Hagen*.

Assuming that *Ute Indian Tribe III*'s holding with respect to the National Forest Lands and the Uncompahgre Reservation was based on a misreading of the applicable legislation, such a misreading alone is not sufficient to justify departing from our earlier judgment. As we stated earlier, our decision to modify *Ute Indian Tribe III* does not result from the desire to correct a prior erroneous judgment, but rather from the need to reconcile our decision with a directly conflicting decision of the Supreme Court. Because *Hagen* did not directly address our holding in *Ute Indian Tribe III* as it relates to the National Forest Lands and the Uncompahgre Reservation, we have no reason to depart from that part of our prior judgment. We thus reject the defendants' contention that the judgment in *Ute Indian Tribe III* should be recalled in its entirety.

B. Non-Trust Lands Within the Original Boundaries of the Uintah Valley Reservation

Because we have concluded that *Hagen* did not address the status of the National Forest Lands or the Uncompahgre Reservation, we must now address the

extent to which *Hagen* directly conflicts with *Ute Indian Tribe III*. In particular, we must decide which lands within the Uintah Valley Reservation are no longer Indian country after *Hagen*. The remaining controversy centers on whether the state and local defendants or the Tribe and the federal government have jurisdiction over the various categories of non-trust (*i.e.,* fee), lands within the original boundaries of the Uintah Valley Reservation, whether held by Indians or non-Indians.

Under 18 U.S.C. § 1151, the Tribe and the federal government have civil and criminal jurisdiction over "Indian country." *Pittsburg & Midway Coal Mining Co. v. Watchman,* 52 F.3d 1531, 1540-41 (10th Cir.1995). Indian country includes "all Indian allotments, the Indian titles to which have not been extinguished." 18 U.S.C. § 1151(c). This category constitutes lands held in trust by the federal government. Indian country also encompasses "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation." 18 U.S.C. § 1151(a). Thus, Indian Country also includes all non-trust, or fee, lands so long as such lands are located within the "limits of any Indian reservation."

There are four categories of non-trust lands at issue in this case:

> (a) lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation;
>
> (b) lands apportioned to the "Mixed Blood" Utes under the Ute Partition Act, Act of Aug. 27, 1954,

Pub.L. No. 97-698, ch. 1009, 68 Stat. 868 (codified at 25 U.S.C. §§ 677-677aa);

(c) lands allotted to individual Indians that have passed into fee status after 1905; and

(d) lands that were held in trust after the Reservation was opened in 1905 but that since have been exchanged into fee status by the Tribe for then-fee (now trust) lands in an effort to consolidate its land holdings pursuant to the Indian Reorganization Act, Act of June 18, 1934, ch. 576, 48 Stat. 984 (codified at 25 U.S.C. §§ 461-79) and the Indian Land Consolidation Act of 1983, Pub.L. No. 97-459, 96 Stat. 2517 (codified at 25 U.S.C. §§ 2201-11).

See Ute Indian Tribe IV, 935 F.Supp. at 1484, 1486. In *Ute Indian Tribe III,* we held that the 1902-1905 allotment legislation did not have the effect of diminishing or disestablishing the Uintah Valley Reservation. We thus concluded that all of the non-trust lands identified above remained "Indian country" under § 1151(a) as lands within "the limits of any Indian reservation." In this case, we must determine the extent to which *Hagen* directly conflicts with our earlier conclusion that all of the above categories of non-trust lands remain within Indian country.

[1530] The parties do not dispute that *Hagen* directly conflicts with the first category of non-trust lands, those lands passing in fee to non-Indians pursuant to the 1902-1905 allotment legislation. This was precisely the category of fee lands at issue in *Hagen.* Accordingly, we modify our mandate in *Ute Indian Tribe III* and hold in accordance with *Hagen* that these lands are no longer within Indian

country under section 1151(a) subject to the jurisdiction of the Tribe and the federal government.

With respect to the other three categories of non-trust lands, the state and local defendants argue that these lands also are no longer within Indian country after *Hagen*. They contend that the Supreme Court in *Hagen* "clearly contemplated that the exterior boundaries of the Reservation would simply be gone." Appt. Brief, at 44. In other words, the defendants argue that the Court held that the 1902-1905 legislation completely terminated the Reservation such that no discrete, definable reservation boundaries now exist. Under the defendants' theory, there are no external boundaries and thus no "limits of any reservation." Indian country therefore is confined under § 1151(c) to "Indian allotments . . . which have not been extinguished," or trust lands. Under the theory that Indian country is limited to trust lands, the defendants argue that the three disputed categories of non-trust lands no longer constitute Indian country.

We reject the defendants' argument that *Hagen* removed all non-trust lands within the original Uintah Valley Reservation from Indian country. In *Hagen*, the Supreme Court did not decide that the 1902-1905 allotment legislation completely disestablished the Uintah Valley Reservation, erasing its outer boundaries and rendering § 1151(a) inapplicable to the three disputed categories of non-trust lands. The Court in *Hagen* stated:

> [W]e hold that the restoration of *unallotted reservation lands* to the public domain evidences a congressional intent *with respect to those lands* inconsistent with the continuation of reservation status. Thus, the existence of such language in

> the operative section of a surplus land Act indicates that the Act *diminished* the reservation.

Hagen, 510 U.S. at 414, 114 S.Ct. at 967 (emphasis added). The Court stated that the Uintah Valley Reservation had been "diminished" – not "disestablished," "eliminated," or "terminated." Moreover, the diminishment was only "with respect to those lands" that had been restored to the public domain under the 1902-1905 legislation. *See Ute Indian Tribe IV,* 935 F.Supp. at 1487-88. We therefore conclude that *Hagen* did not erase the boundaries of the Uintah Valley Reservation and that the current "limits of [the] reservation" thus embrace the three categories of non-trust lands at issue. In sum, *Hagen* does not conflict with our holding in *Ute Indian Tribe III* that these categories of non-trust lands remain within Indian country under section 1151(a).

We note that this conclusion has the benefit of producing a stable, unchanging allocation of jurisdiction. Under our approach, the Tribe and the federal government retain jurisdiction over all trust lands, the National Forest Lands, the Uncompahgre Reservation, and the three categories of non-trust lands that remain within the boundaries of the Uintah Valley Reservation. The state and local defendants have jurisdiction over the fee lands removed from the Reservation under the 1902-1905 allotment legislation. Although a title search may be necessary to determine which lands were opened under the 1902-1905 legislation, the parties' respective jurisdictions will never change once the status of those lands is conclusively determined. By contrast, under the defendants' theory (*i.e.,* that Indian country is limited to trust lands) the Indian country status of land would change as trust lands are transferred into fee lands. We recognize

that while our approach might result in a checkerboard allocation of jurisdiction, such a result is more desirable than the defendants' approach, which would produce a "moving checkerboard" because lands leaving trust status would also lose their status as Indian country.

In conclusion, we reject the argument that Indian country is confined to lands held in trust by the federal government under § 1151(c). Rather, Indian country extends to all trust lands, the National Forest Lands, [1531] the Uncompahgre Reservation, and the three disputed categories of non-trust lands discussed above.[6]

CONCLUSION

For the foregoing reasons, we DENY the defendants' motion to recall our mandate in *Ute Indian Tribe III,* 773 F.2d 1087 (10th Cir.1985) (en banc), *cert. denied,* 479 U.S. 994, 107 S.Ct. 596, 93 L.Ed.2d 596 (1986). Rather, we MODIFY our mandate in *Ute Indian Tribe III* as set out above and REMAND with instruction that the district court consider the Tribe's request for permanent injunctive relief in light of this opinion.

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[6] We decline to address whether any portion of the non-trust lands opened in 1905 might still constitute Indian country under section 1151(b) as a "dependent Indian community" because that question is not properly before the court. The district court may be asked to consider the question upon remand.

286 F.3d 1195 (10th Cir. 2002)

TIMPANOGOS TRIBE, Snake Band of Shoshone Indians of Utah Territory, Plaintiff-Appellee,

v.

Kevin CONWAY, Assistant Director, Utah Department of Natural Resources, Division of Wildlife Resources; Michael O. Leavitt, Governor of the State of Utah, Defendants-Appellants.

Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, Amicus Curiae.

No. 01-4056.

United States Court of Appeals, Tenth Circuit.

April 15, 2002.

[1198] Philip C. Pugsley, Assistant Attorney General (Mark L. Shurtleff, Attorney General, with him on the briefs), State of Utah, Salt Lake City, UT, for Defendants-Appellants.

Michael L. Humiston of Heber City, UT, for Plaintiff-Appellee.

Sandra Hansen, Office of Legal Counsel, Ute Indian Tribe, Fort Duchesne, Utah; and Tod J. Smith of Whiteing & Smith, Boulder, CO, filed a brief for Amicus Curiae.

Before SEYMOUR and HENRY, Circuit Judges, and OBERDORFER,* District Judge.

SEYMOUR, Circuit Judge.

The Timpanogos Tribe, Snake Band of Shoshone Indians of Utah Territory and aboriginal inhabitants of the region, filed suit against Kevin Conway, Assistant Director of the Utah Department of Natural Resources, and Governor Michael Leavitt of Utah. The district court denied defendants' motion to dismiss on the basis of, *inter alia,* Eleventh Amendment immunity. Defendants filed an interlocutory ap-[1199]peal of the Eleventh Amendment immunity issue and ask us to assert pendant appellate jurisdiction over the other issues argued in support of their motion to dismiss. We reach only the issues of Eleventh Amendment immunity and subject matter jurisdiction, and we affirm.

I.

The Tribe's complaint originally sought to quiet title on the Uintah Valley Reservation and obtain the following: a declaration that the Timpanogos Tribe, and not the Ute Tribe, are the "Indians of Utah" contemplated in the Executive Order, *see* Exec. Order, 1 Kappler 900 (Oct. 3, 1861), and Congressional Act, *see* Act of May 5, 1864, ch. 77, 13 Stat. 63, creating the Reservation; recognition of their rights under the Order and Act, specifically rights to hunt, fish, and gather; and a declaration that Messrs. Conway and Leavitt have no authority to regulate or

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* Louis F. Oberdorfer, United States District Judge for the District of the District of Columbia, sitting by designation.

control the hunting, fishing, or gathering rights of the Timpanogos Tribe on Indian lands within the Reservation, except as such authority is explicitly granted to the State of Utah by Act of Congress or consented to by the Tribe. Defendants filed a motion to dismiss under FED.R.CIV.P. 12(b)(6) raising five issues: (1) Eleventh Amendment immunity; (2) res judicata; (3) lack of subject matter jurisdiction under 28 U.S.C. § 1331; (4) failure to join indispensable parties; and (5) laches.

Over the course of a hearing on the motion and at the suggestion of the district court, the Tribe narrowed its complaint to come within the *Ex parte Young* exception to Eleventh Amendment sovereign immunity. *See Ex parte Young,* 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). By the end of the hearing, the Tribe had agreed to amend its complaint to seek nothing more than prospective, non-monetary, injunctive relief as to its hunting, fishing, and gathering rights within the Indian-controlled lands of the Uintah Valley Reservation.[1] The district court denied the motion to dismiss on all grounds.

* * *

[1201[**III.**

Defendants assert the district court lacks subject matter jurisdiction because plaintiffs have failed to state a claim that raises a cognizable federal question. The crux of defendants' contention, described in more detail below, is

[1] The district court made clear in the hearing on the motion to dismiss that the Tribe's claims as to rights within the boundaries of the Uintah Valley Reservation do not relate to lands within the reservation that have been explicitly withdrawn.

that the Tribe has no federal right on which to base a claim because it is not a "federally recognized" tribe.

[1202] In assessing whether the Tribe has stated a federal question in asserting its right to hunt on the Reservation, we look to the roots of the relationship between Indian tribes and the United States government. By the time of the Revolutionary War, "[i]t was accepted that Indian nations held 'aboriginal title' to lands they had inhabited from time immemorial." *County of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 233-34, 105 S.Ct. 1245, 84 L.Ed.2d 169 (1985) (*Oneida II*).

> It very early became accepted doctrine in this Court that although fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign-first the discovering European nation and later the original States and the United States – a right of occupancy in the Indian tribes was nevertheless recognized. That right, sometimes called Indian title and good against all but the sovereign, could be terminated only by sovereign act. Once the United States was organized and the Constitution adopted, these tribal rights to Indian lands became the exclusive province of the federal law. Indian title, recognized to be only a right of occupancy, was extinguishable only by the United States.

Oneida Indian Nation of N.Y. v. County of Oneida, 414 U.S. 661, 667, 94 S.Ct. 772, 39 L.Ed.2d 73 (1974) (*Oneida I*).

The federal government has formally recognized the rights of Indians to specified areas of land through treaties

with tribes and by statute and executive order. *See generally* FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW, at 473-81 (1982 ed.).

> Beyond general principles of liberal interpretation of treaties in favor of tribes, there are certain rules with respect to the interpretation of treaty provisions establishing tribal land ownership. So long as a treaty purports to recognize Indian title or permanent rights to particularly described land it creates a recognized Indian title. Accordingly, phrases in treaty grants such as "use and occupancy" or "as Indian lands are held" do not refer to original Indian title but are held to vest recognized and enforceable property rights in the tribes."

Id. at 476.

The reservation at issue here was created by executive order and approved by an act of Congress.[3] The Act authorized and required the collection and settlement of the Indians of the Utah territory in the Uintah Valley, which was "set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said territory as may be induced to inhabit the same." *Id.* Under the accepted construction principles applicable to the creation of Indian reservations quoted above, the language of the Act setting apart the Uintah Valley for the permanent settlement and exclusive occupancy of Utah Indian tribes recognized and guaranteed the Indian rights

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[3] Indian reservations created by statute, agreement, or executive order generally have the same legal ramifications as those created by treaty. *See United States v. Dion*, 476 U.S. 734, 745 n. 8, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986); FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW, at 127-28 (1982 ed.).

of the tribes who settled there. Those rights include the hunting rights at issue in this case. "As a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them, unless such rights were clearly relinquished by treaty or have been modified by Congress. These rights need not be expressly mentioned in the treaty." *United States v. Dion,* 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986) (internal citation omitted).

[1203] "It is rudimentary that 'Indian title is a matter of federal law and can be extinguished only with federal consent' and that the termination of the protection that federal law, treaties, and statutes extend to Indian occupancy is 'exclusively the province of federal law.'" *Wilson v. Omaha Indian Tribe,* 442 U.S. 653, 670-71, 99 S.Ct. 2529, 61 L.Ed.2d 153 (1979) (quoting *Oneida I,* 414 U.S. at 670, 94 S.Ct. 772). Although the Tribe here asserts Indian title under a federal statute, defendants nevertheless argue that the Tribe's claim does not arise under federal law for purposes of subject matter jurisdiction pursuant to section 1331. Defendants contend the Tribe is barred from proceeding under section 1331 because the Tribe is not administratively recognized by the Bureau of Indian Affairs of the Department of Interior pursuant to 25 C.F.R. Pt. 83, because the Tribe was not included as one for whose benefit the Reservation was created, and because the Act creating the Reservation was not intended to create an implied cause of action. The main thrust of all defendants' arguments is an assertion that the Tribe's lack of federally recognized status is fatal to its ability to proceed under section 1331. We disagree.

In 1978, the Department of the Interior promulgated regulations establishing the procedures by which it would acknowledge "that certain American Indian groups exist

as tribes." 25 C.F.R. § 83.2.[4] Administrative recognition of an Indian tribe is now a prerequisite to that tribe's ability to obtain "the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes." *Id.* However, the federal government had previously recognized groups of Indians as tribes in a variety of ways for a variety of purposes. *See generally* COHEN, at 3-7. Even after the promulgation of Part 83, "tribes cannot be neatly divided into 'recognized' and 'nonrecognized' tribes for all purposes; rather, a tribe may 'exist' for some purposes but not for others." *Id.* at 7.

Moreover, "[t]he Department of the Interior cannot under any circumstances abrogate an Indian treaty directly or indirectly. Only Congress can abrogate a treaty, and only by making absolutely clear its intention to do so." *United States v. Washington,* 641 F.2d 1368, 1371 (9th Cir.1981); *see also Dion,* 476 U.S. at 738-40, 106 S.Ct. 2216; *Wilson,* 442 U.S. at 670-71, 99 S.Ct. 2529. Thus, the fact that a tribe is not administratively recognized does not affect that tribe's vested treaty rights. *See Greene v. Babbitt,* 64 F.3d 1266, 1270 (9th Cir.1995); *see also Menominee Tribe v. United States,* 391 U.S. 404, 88 S.Ct. 1705, 20 L.Ed.2d 697 (1968) (treaty hunting rights survived despite congressional termination of all formal tribal political authority). "[A] tribe's recognition or lack of recognition by the Secretary of the Interior does not determine whether the tribe has vested treaty rights."

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[4] These regulations cite as statutory authority for their promulgation 5 U.S.C. § 301; 25 U.S.C. §§ 2, 9; and 43 U.S.C. § 1457. *See* 25 C.F.R. Pt. 83. "The term tribe has no universal legal definition. There is no single federal statute defining an Indian tribe for all purposes, although the Constitution and many federal statutes make use of the term." COHEN, at 3.

Greene, 64 F.3d at 1270. "Nonrecognition of the tribe by the federal government and the failure of the Secretary of the Interior to approve a tribe's enrollment may result in loss of statutory benefits, but can have no impact on vested treaty rights." *Id.* (quoting *United States v. Washington,* 520 F.2d 676, 692-93 (9th Cir.1975)). Accordingly, the Tribe here may establish federal question jurisdiction in asserting its hunting rights despite the [1204] fact that it is not recognized by the Department of the Interior.

Defendants rely on *Western Shoshone Bus. Council v. Babbitt,* 1 F.3d 1052 (10th Cir.1993), in arguing that the Tribe's lack of recognized status bars its ability to assert its Indian rights under the Act creating the Uintah reservation. *Western Shoshone* is distinguishable, however, due to the nature of the federal statute involved in that case. The Tribe in *Western Shoshone* was seeking to assert rights under 25 U.S.C. § 81, which requires that contracts with tribes for the payment of money be approved by the Bureau of Indian Affairs. Section 81 created a federal benefit available to Indian tribes officially recognized for that purpose. Because the tribe in that case was not administratively recognized, we held it was not within the zone of interests protected by section 81 and therefore had no standing to bring suit. Here, however, the statute establishing the reservation did not create a federal benefit or provide a federal service; rather, it recognized and guaranteed preexisting rights. *Western Shoshone* addressed only the ability of an unrecognized tribe to obtain statutory benefits *created* by the federal government; it does not apply to preexisting Indian rights recognized and guaranteed by a treaty, statute, or executive order.

Defendants' remaining challenges to subject matter jurisdiction under section 1331 may be addressed summarily. Defendants contend the Tribe cannot claim rights under the Act establishing the Reservation because it is not a tribe for whose benefit the Reservation was created. It does not appear from the scant record before us on appeal that defendants presented this argument to the district court. In any event, as the district court observed, on a motion to dismiss under Rule 12(b)(6) the court "must accept as true all the factual allegations in the reasonable inferences in plaintiff's favor." *Seamons v. Snow,* 84 F.3d 1226, 1231-32 (10th Cir.1996). The allegations in the Tribe's complaint, taken as true, are clearly sufficient for purposes of a motion to dismiss to demonstrate that the Tribe is a group to whom the Act applies.

* * *

[1205] We conclude that the district court had subject matter jurisdiction over this action under section 1331. . . .

* * *

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

INTER-OFFICE TRANSMITTAL

TO: Area Director,
Phoenix, Arizona

Bureau of Indian Affairs
Received
March 9, 1970
Phoenix

FOR ATTENTION OF Credit and Financing, Daphne Armstrong

FROM:

Uintah and Ouray Agency
Fort Duchesne, Utah 84026 Ten. and Mgmt. Real Prop. Mgmt. 03-05-70

SUBJECT:

The attached mimeographed final MB roll with band identification added was prepared by the Tribal office under direction of R. O. Curry, Administrative Officer. It is being mailed you in accordance with a telephone conversation with Mr. Thompson yesterday. The map is being prepared and will be mailed you under separate cover within the next day or two.

FINAL ROLL MIXED –BLOOD

Savings No.	Roll No.		Sex	Date of Birth	Remarks	BAND
	1	Allen, Preston	M	12-21-13		Uintah
	2	Allred, Frances	F	7-27-12		Uintah
	3	Antonio, Lorena Reed	F	11-10-25		Uintah
	4	Arkansas, Phillip	M	1903		Uintah

						BAND
153	5	Ballard, Delphina	F	2-3-40	MM	Uintah
155	6	Ballard, Lola Christine	F	11-1-41		Uintah
154	7	Ballard, Louis Jr.	M	10-22-42		Uintah
	8	Bailey, Lola C. Daniels	F	9-15-13		Uintah
2178	9	Bailey, John Franklin	M	10-2-38	MM	Uintah
	10	Bailey, Gary Thomas	M	12-5-34		Uintah
	11	Bailey, Richard Allen	M	5-20-33		Uintah
	12	Bitsilly, Laura LaRose	F	12-28-33		Uintah
2180	13	Bitsilly, Flora	F	5-10-53		Uintah
	14	Brown, Ruth Pigeon	F	5-17-20		Uintah
2181	15	Burns, Richard V. Jr.	M	9-23-38		Uintah
	16	Burns, Roberta Marie	F	12-13-40	MM	Uintah
	17	Burson, Dudley Weldon	M	11-15-18		Uintah
	18	Burson, Frank Kyle	M	11-27-22		Uintah
	19	Burson, Arlene Ella	F	3-20-40	MM	Uintah
279	20	Burson, Carnes Dudley	M	5-14-42		Uintah
278	21	Burson, Carma Bly	F	7-7-43		Uintah

					BAND
	22	Burson, Fred LaRose	M	4-11-35	Uintah
	23	Burson, Oliver	M	7-5-30	Uintah
	24	Burson, Leonard Richard	M	9-27-20	Uintah
	25	Burson, Weldon Nephi	M	1-14-24	Uintah
277	26	Burson, Alfred Leonard	M	9-27-52	Uintah
	27	Burson, Ella	F	8-26-17	Uintah
	28	Burson, Robert George	M	6-2-26	Uintah
	29	Burson, Woodsey Irene LaRose	F	1898	Uintah
	30	Bumgarner, Elizabeth Curry	F	1-29-13	Uintah
2469	31	Bumgarner, Samuel Reginald	M	2-28-38	Uintah
3636	32	Bumgarner, Oranna —	F	11-5-44	Uintah
3637	33	Bumgarner, Craig Walker	M	2-13-49	Uintah
638	34	Bumgarner, Elizabeth Warleen	F	8-14-52	Uintah
	35	Burdick, — Morris	M	8-31-27	Uintah
	36	———	—	———	———

						BAND
	37	Butcher, --ieda Pike	F	9-27-08		Uintah
	38	Cambell, Ella E. Pike	F	5-9-13		Uintah
	39	Case, Louise Allen	F	1-12-16		Uintah
	40	Chivers, Mary Christensen	F	4-7-34		Uintah
	41	Christensen, Clarence	M	11-24-24		Uintah
	42	Christensen, Esther Ray Clark	F	1-21-25		Uintah
	43	Christensen, Jewel	M	6-11-30		Uintah
	44	Christensen, Salma Hackford	F	8-27-16		Uintah
	45	Christensen, Jens Dale	M	9-29-35		Uintah
	46	Christensen, Dilbert Richard	M	3-26-28		Uintah
386	47	Christensen, LeRoy	M	1-24-37		Uintah
	48	Caudell, Floyd Eugene	M	11-6-38		Uintah
	49	Caudell, Joan Barbara	F	8-10-40	MM	Uintah
2186	50	Caudell, LaFern Cleo	F	10-9-42		Uintah
	51	Clark, Joan Sylvia Beacroft	F	5-9-35		Uintah

						BAND
	52	Condo, Iva Karie McAdams	F	11-29-24		Uintah
	53	Collier, Lenora Harmes	F	7-28-16		Uintah
	54	Cook, June McClure	F	6-17-29		Uintah
	55	Coop, Hazel E. Young	F	3-4-32	ESTATE	Uintah
	56	Copperfield, Dwight	M	12-25-17		Whiteriver
	57	Copperfield, Alice Oarum	F	10-3-24		Whiteriver
361	58	Chapoose, Thomas Carnes	M	9-12-42		Uintah
	59	Curry, Oran F.	M	5-2-91		Unc.
	60	Curry, Della Harris	F	10-6-90		Uintah
	61	Curry, Reginald O.	M	10-20-14		Unc.
	62	Curry, Dianne Elizabeth	F	1-11-44		Unc.
	63	Curry, Gwennita O.	F	3-16-36		Unc.
3639	64	Curry, James Earl	M	7-7-40		Unc.
3640	65	Curry, Rebecca Lynn	F	9-9-48		Unc.
	66	Curry, Richard Henry	M	1-18-27		Unc.

						BAND
2187	67	Curry, Richard H., Jr.	M	5-3-47		Unc.
2188	68	Curry, Ralph Edward	M	11-2-48		Unc.
2189	69	Curry, Regina Lorene	F	1-12-53		Unc.
	70	Crumbo, Daniel	M	1-9-20		Uintah
	71	Crumbo, Hal	M	9-23-24		Uintah
	72	Crumbo, Wentora Daniels	F	1894		Uintah
2190	73	Daniels, Allen George	M	4-21-33		Uintah
	74	———	—	———		———
	75	Daniels, Rose Mary	F	10-6-37	MM	Uintah
–3	76	Daniels, Bonnie Lee	F	11-5-38		Uintah
	77	Daniels, Charles Albert	M	6-16-36		Uintah
	78	Daniels, Everett	M	2-22-27		Uintah
–7	79	Daniels, Paula Evette	F	8-8-52		Uintah
	80	Daniels, Gene T.	M	12-9-29		Uintah
	81	Daniels, Hal Albert	M	12-9-86		Uintah
	82	Daniels, John	M	9-13-16		Uintah
	83	Daniels, Terry J.	M	3-3-37	MM	Uintah

						BAND
	84	Daniels, Lewis	M	8-10-32		Uintah
	85	Daniels, Walter	M	11-14-35		Uintah
–04	86	Daniels, Walter	M	7-18-88	ESTATE	Uintah
	87	Denver, Alvin Richardson	M	6-24-20		Uintah
–95	88	Denver, Alvin Richard	M	8-21-39	MM	Uintah
	89	Denver, Connie Mack Sr.	M	10-14-13		Uintah
–39	90	Denver, Reginald D.	M	12-29-43		Uintah
–96	91	Denver, Connie Mack Jr.	M	12-27-42		Uintah
–97	92	Denver, Marilyn Caye	F	5-29-46		Uintah
–98	93	Denver, Gwendolyn Rose	F	11-18-47		Uintah
–199	94	Denver, Elmer George	M	2-19-50		Uintah
–200	95	Denver, Ava Renae	F	5-15-51		Uintah
	96	Denver, Ellis	M	7-1-26		Uintah
–201	97	Denver, Mary Lucille	F	4-3-48		Uintah
	98	Denver, Elmer Jr.	M	4-30-16		Uintah

					BAND
	99	Denver, Charles Howard	M	5-13-37	Uintah
	100	Denver, Mildred Irene	F	4-26-36	Uintah
	101	Denver, Pauline	F	8-21-31	Uintah
	102	Denver, Milton	M	8-26-36	Uintah
	103	Devener, Naturitch Kolb	F	5-31-15	Uintah
	104	Disney, Illa Hendricks	F	3-25-37	Uintah
	105	Eker, Nettie Ray LaRose	F	11-7-22	Uintah
2202	106	Eddards, Gerald Twohy	M	5-21-39	Uintah
	107	Edmo, LaBarbara T. Hendricks	F	12-20-30	Uintah
	108	Felter, Dan Earl	M	10-30-35	Uintah
	109	Felter, James Keith	M	8-25-32	Uintah
	110	Felter, Jasper Lee	M	11-18-33	Uintah
	111	Ferguson, Anna Dot Workman	F	7-14-19	Uintah
	112	———	—	9-26-22	Uintah
	113	Frazier, Etta Daniels	F	7-19-19	Uintah

						BAND
	114	Galloway, Christine Pedro	F	3-21-1		Uintah
	115	Garcia, Pearl Taylor	F	1897		Uintah
	116	Gardner, Carma Colleen Reed	F	9-12-38	MM	Uintah
	117	Gardner, Earl	M	4-15-05		Uintah
	118	Gardner, Gary	M	3-20-35		Uintah
	119	Gardner, Elva Harris	F	3-12-29		Uintah
	120	Gardner, John Delmar	M	2-5-09		Uintah
	121	Gardner, Marion LaRae	F	7-6-37	MM	Uintah
	122	Gardner, Glenda Jane (Arrowchis)	F	6-6-35		Uintah
	123	Grayson, Emily Hendricks	F	2-5-33		Uintah
	124	Genereaux, Nathan Byrd	M	7-30-33		Uintah
661	125	Genereaux, Thelma Leta	F	3-19-52		Uintah
203	126	Green, Gary Edgar, Jr.	M	8-14-53		Whiteriver
	127	Hackford, Clifton J.	M	10-4-25		Uintah
723	128	Hackford, Elizabeth	F	2-4-46		Uintah

					BAND
722	129	Hackford, Clifton Kermit	M	2-1-47	Uintah
725	130	Hackford, Sandra LaVerne	F	1-12-50	Uintah
724	131	Hackford, Randolph C.	M	5-10-52	Uintah
	132	Hackford, David LaMarr	M	3-14-36	Uintah
	133	Hackford, Elmer LeRoy	M	3-3-22	Uintah
	134	Hackford, Wanda Russell	F	4-1-26	Uintah
	135	Hackford, Eloise Beatrice	F	7-3-33	Uintah
	136	Hackford, Eva F. Van	F	1901	Uintah
	137	Hackford, Lynn Henry	M	1-16-39	Uintah
	138	Hackford, Lewis James	M	6-18-31	Uintah
	139	Hackford, Melvin Lyle	M	11-3-29	Uintah
	140	Hackford, George Jr.	M	9-23-20	Uintah
	141	Hackford, Richard B.	M	12-9-23	Uintah
2205	142	Hackford, Richard Douglas	M	8-25-50	Uintah
2206	143	Hackford, Richita Marie	F	8-15-51	Uintah

						BAND
2207	144	Hackford, Rosana Faye	F	8-4-52		Uintah
	145	Hackford Sarah Van	F	10-9-96		Uintah
	146	Hackford, Calvin C.	M	9-12-37	MM	Uintah
	147	Hackford, Verna Marie	F	1-3-33		Uintah
	148	Hanson, Mary M. Reed	F	8-11-21		Uintah
2497	149	Hanson, Mark Reed	M	5-9-49		Uintah
	150	Harmes, John	M	1876		Uintah
	151	Harris, –use K.	M	2-17-94		Uintah
3641	152	Harris, Annie Pike	F	1892		Uintah
	153	Harris, Albert Harding	M	5-16-21		Uintah
2208	154	Harris, Lacee Allen	M	4-29-44		Uintah
2209	155	Harris, Linda Marie	F	1-26-48		Uintah
2210	156	Harris, John Carlyle	M	11-10-52		Uintah
2211	157	Harris, Suzanne	F	1-17-51		Uintah
	158	Harris, Clarence Sr.	M	1893		Uintah
	159	Harris, Gilbert Henry	M	11-17-35		Uintah
	160	Harris, Donald	M	12-12-33		Uintah
3642	161	Harris, Buddy	M	10-12-41		Uintah

						BAND
	162	Harris, Clarence Jr.	M	10-7-12		Uintah
2212	163	Harris, Annie Maxine	F	8-26-38	MM	Uintah
2213	164	Harris, Everett	M	3-11-39		Uintah
	165	Harris, Woodrow Daniel	M	5-16-35		Uintah
	166	Harris, Henry E. Jr.	M	1-31-96		Uintah
328	167	Harris, John E.	M	6-18-88		Uintah
	168	Harris, Mary Reed	F	11-7-69		Uintah
	169	Healey, Claudia Daniels	F	12-10-14		Uintah
	170	Healey, Ralph Jr.	M	3-20-37		Uintah
	171	Hendricks, Brett Clinton	M	8-29-26		Uintah
	172	Hendricks, Charley Jr.	M	8-28-24		Uintah
	173	Hendricks, Ezelda Van	F	1-13-21		Uintah
	174	Hendricks, Dee	M	2-2-21		Uintah
	175	Hendricks, Floyd E.	M	12-17-35		Uintah
	176	Hendricks, Helen Mack Murray	F	1-6-36		Uintah
	177	Hendricks, Elda Hackford	F	7-22-27		Uintah

						BAND
	178	Hendricks, Margaret Murray	F	1903		Uintah
	179	Hendricks, Reed	M	5-29-28		Uintah
3643	180	Hill, Nettie Harmes	F	1879		Uintah
	181	Hill, Robert L.	M	1902		Uintah
	182	Holmes, Eva L. Harris	F	9-26-13		Uintah
2220	183	Holmes, Mary Sue	F	8-14-39	MM	Uintah
2221	184	Holmes, Tonia	F	6-12-50		Uintah
	185	Holmes, Rose Crumbo	F	8-5-21		Uintah
2223	186	Holmes, Jacqueline Lee	F	6-3-41		Uintah
2224	187	Holmes, Michael E.	M	11-6-44		Uintah
	188	———	F	1-12-24		Uintah
	189	Iorg, Arlys	M	8-12-33		Uintah
	190	Iorg, Clora K. Hackford	F	1-15-35		Uintah
	191	Iorg, Lorena M. Denver	F	4-3-12		Uintah
	192	Iorg, Thilma Curry	F	2-5-09		Uintah
	193	Iorg, Verle Charles Jr.	M	4-12-38	MM	Uintah
356	194	Iorg, Danny Kaye	M	2-9-47		Uintah

					BAND
359	195	Iorg, Oran Henry	M	4-6-39	Uintah
	196	Jackman, Norma Harris	F	4-26-23	Uintah
	197	Jensen, Leona M. -. Christensen	F	11-18-32	Uintah
	198	Jorgenson, Rodney N.	M	3-26-23	Uintah
	199	Johnson, Oreane F. Curry	F	12-10-30	Uintah
-49	200	Johnson, Margaret Dellanna	F	3-23-51	Uintah
	201	Jones, Ray Pike	M	11-13-32	Uintah
	202	Jones, Simon Ray Pike	M	2-1-07	Uintah
	203	Johnson, Wilson	M	8-15-08	Uintah
	204	Kelley, Meryl E. Workman	F	6-9-19	Uintah
493	205	Kanapatch, Berhemia	F	1880	Unc.
	206	Knowles, Katherine Young	F	9-29-24	Uintah
	207	Kolb, Ethel Daniels	F	1891	Uintah
	208	Kolb, Donald Lloyd	M	4-23-11	Uintah

					BAND
	209	Kolb, Cosma Lee	F	1-31-40	Uintah
	210	Kolb, John Wayne	M	3-11-42	Uintah
	211	Kolb, Lawrence L.	M	5-6-36	Uintah
	212	Kolb, Jewel Dee	M	9-17-18	Uintah
342	213	Kolb, Jewel Daniel	M	6-27-41	Uintah
236	214	Kolb, Grace Ethel	F	7-5-43	Uintah
238	215	Kolb, Sandra Lee	F	10-23-50	Uintah
	216	Kolb, Quentin F.	M	8-17-24	Uintah
	217	Kolb, Taw–ee	M	2-5-17	Uintah
498	218	Kolb, D–ral Edward	M	5-22-39	Uintah
	219	Labeau, Ada D. Denver	F	2-24-34	Uintah
	220	Land, Edna W. Johnson	F	12-25-23	Uintah
334	221	Land, Danny	M	9-21-46	Uintah
333	222	Land, Donna Mae	F	4-26-44	Uintah
336	223	Land, Margaret Ann	F	12-14-48	Uintah
331	224	Land, Barbara Joan	F	1-4-51	Uintah
335	225	Land, Karen Marie	F	4-12-52	Uintah

					BAND
337	226	Land, Sharon Kay	F	4-26-54	Uintah
	227	LaRose, Betty Taylor	F	5-6-31	Uintah
2243	228	LaRose, Carl Alan	M	5-29-48	Uintah
2245	229	LaRose, Darrell Henry	M	9-23-50	Uintah
	230	LaRose, Carnes	M	11-12-92	Uintah
	231	LaRose, Kenneth Carnes	M	8-9-21	Uintah
	232	LaRose, Lois Mae Secakuku	F	2-22-28	Uintah
1050	233	LaRose, JoAnna	F	4-28-48	Uintah
1051	234	LaRose, K.C.	M	10-13-52	Uintah
	235	LaRose, Loren Fred	M	11-29-19	Uintah
1046	236	LaRose, Dorothy	F	11-14-45	Uintah
1042	237	LaRose, Christine	F	9-26-49	Uintah
1055	238	LaRose, Peggy Joyce	F	2-8-50	Uintah
1056	239	LaRose, Richard –.	M	4-19-47	Uintah
	240	LaRose, Norman	M	4-16-16	Uintah
	241	LaRose, Juanita Daniels	F	12-11-24	Uintah

					BAND
1041	242	LaRose, Aaron Roy	M	5-9-47	Uintah
1049	243	LaRose, Jackie	M	3-10-51	Uintah
1054	244	LaRose, Norman Dennis	M	6-20-48	Uintah
	245	LaRose, Thomas Sr.	M	1903	Uintah
	246	LaRose, Rosella Montes	F	5-19-10	Uintah
	247	LaRose, Blanche May	F	6-10-35	Uintah
	248	LaRose, Eugenia	F	10-22-36	Uintah
2257	249	LaRose, Eric Gene	M	10-2-42	Uintah
	250	Larson, Geneva Daniels	F	9-6-20	Uintah
	251	LeBaron, Calva Hack-ford	F	11-11-28	Uintah
2259	252	Lee, Charles –ayne	M	1-27-39	Uintah
1128	253	Lucero, Berbarita	F	10-7-43	Unc.
	254	Lucero, Bernard	M	7-4-33	Unc.
-323	255	Lucero, Eileen Marie	F	10-22-48	Unc.
	256	Lucero, Fred	M	4-27-29	Unc.

						BAND
-276	257	Lucero, Juanita	F	8-16-46		Unc.
	258	Lucero, Pete Robert	M	1-26-36		Unc.
	259	Lujan, Donnaciana	M	1871		Unc.
	260	Lopez, Lucille Hack-ford	F	5-9-24		Uintah
	261	Martin, Sandra allise	F	7-15-36		Uintah
	262	Martinez, Aileen Burson	F	7-21-28		Uintah
	263	Matheson, Leah Elinor	F	1-25-38	MM	Uintah
	264	McClure, Juanita Workman	F	5-8-14		Uintah
	265	McClure, Lynn Frank	M	4-24-33		Uintah
	266	McClure, Rex Charles	M	1-16-35		Uintah
	267	McMurdock, Glenn Jr.	M	6-24-25		Uintah
	268	McQuarrie, Ina P. Gardner	F	9-12-07		Uintah
	269	McQuarrie, Ina Marie	F	9-18-29		Uintah
	270	McQuarrie, Joyce	F	2-11-34		Uintah

						BAND
	271	Myers, Florence Denver	F	1-3-28		Uintah
	272	Mitchell, Theresa J. McClure	F	11-30-30		Uintah
	273	Mojado, Gwendolyn Murdock	F	12-25-26		Uintah
2266	274	Mojado, Alan Gil	M	7-2-50		Uintah
2265	275	Mojado, Colin Gary	M	7-4-52		Uintah
2264	276	Mojado, Dennis Wayne	M	4-23-48		Uintah
2263	277	Mojado, Lu Ann	F	7-2-50		Uintah
2262	278	Mojado, Mickey Lynn	M	8-19-51		Uintah
	279	Montes, Howard	M	11-31-17		Uintah
2261	280	Montes, Monte Ray	M	4-29-37		Uintah
	281	Montes, Joseph	M	1889		Uintah
	282	Montes, Betty Jo	F	8-18-36	MM	Uintah
1234	283	Montes, Helen Mary	F	12-22-48		Uintah
1235	284	Montes, Leonard Gene	M	3-30-44		Uintah

						BAND
1238	285	Montes, Roger Lynn	M	1-15-47		Uintah
1233	286	Montes, Charles Gail	M	10-4-50		Uintah
1237	287	Montes, Ralph	M	7-7-40		Uintah
2260	288	Montes, William	M	5-7-42		Uintah
	289	Montes, Thomas H.	M	12-13-13		Uintah
	290	Montes, Geneva Ellen	F	9-2-37	MM	Uintah
	291	Montes, Jeraldine	F	6-18-50		Uintah
	292	Montes, Thomas L.	M	7-21-46		Uintah
	293	M–ny, Amber Taylor	F	5-15-18		Uintah
	294	Murdock, Lula Harris	F	5-16-02		Uintah
2255	295	Murdock, Brenda Carol	F	6-29-40		Uintah
2254	296	Murdock, Karnel	M	10-10-46		Uintah
	297	Murdock, Gary	M	1-11-37	MM	Uintah
	298	Murdock, Mary Estella	F	4-24-39	MM	Uintah
2252	299	Murdock, Ronald Stanley	M	7-13-41		Uintah
—1	300	Murdock, Stuart	M	5-6-43		Uintah
	301	Murdock, —lla	M	4-1-28		Uintah

						BAND
	302	Murdock, — — Hack-ford	F	6-14-3_		Uintah
	303	Murdock, Benny	M	1-24-30		Uintah
	304	Murdock, Ora Pike	F	1902		Uintah
	305	Murray, Julius	M	7-17-09		Uintah
	306	Murray, John McConnell	M	7-30-11		Uintah
	307	Murray, Harris Marcell	M	10-4-05		Uintah
1293	308	Murray, Brian Gene	M	6-11-41		Uintah
1291	309	Murray, Annie Laurel	F	6-18-43	MM	Uintah
1295	310	Murray, David Marcell	M	7-19-45		Uintah
3644	311	Murray, Techumseh	M	1883		Uintah
	312	Mountain Lion, Howard	M	1-20-34		Whiteriver
	313	Neilsen, Christian P.	M	2-20-31		Uintah
	314	Neilsen, Norman V.	M	11-10-25		Uintah
	315	Neilsen, Lorraine R. Reed	F	7-12-28		Uintah
2250	316	Neilsen, Doyle Lee	M	7-31-50		Uintah

						BAND
2249	317	Neilsen, Norma Lorinda	F	7-29-52		Uintah
2248	318	Neilsen, Ilenna Janice	F	3-7-37	MM	Uintah
	319	Neilsen, Frances S. Allred	F	10-20-35		Uintah
	320	Neilsen, Seibert LaMarr	M	11-30-32		Uintah
	321	Oberhansley, Edith M. Denver	F	4-30-22		Uintah
	322	Oberhansley, Phyllis H. Daniels	F	10-23-16		Uintah
	323	Oberhansley, Sylvia –. Daniels	F	3-30-11		Uintah
	324	O'Neil, Ada L. Pike	F	5-2-10		Uintah
	325	O'Neil, —n	F	9-19-31		Uintah
	326	O'Neil, ReNae Darlene	F	7-25-30		Uintah
	327	Pantaloon, Cecelia	F	8-6-31		Unc.
	328	Pargeets, Alberta Elizabeth	F	1-23-39	MM	Uintah
	329	Peters, Geraldine Betty	F	10-21-32		Unc.

					BAND
	330	Peters, Pearl	F	3-28-29	Unc.
	331	Peters, Ray Jr.	M	4-29-26	Unc.
2247	332	Peters, -en-y -eginal-	F	10-26-53	Unc.
	333	Peters, Yvonne Delores	F	12-7-27	Unc.
	334	Peterson, Dorothy Jean Russell	F	9-17-31	Uintah
	335	Phillips, Margaret Reed	F	1-7-14	Uintah
3645	336	Phillips, Douglas M.	M	2-25-42	Uintah
3646	337	Phillips, Duane L.	M	7-9-44	Uintah
	338	Pike, Elvira	F	1886	Uintah
	339	Pike, Clyde	M	1899	Uintah
	340	Pike, Jasper	—	1—	Uintah
	341	Pike, Keith Aaron	M	6-12-36	Uintah
	342	Pike, Lawrence A.	M	11-7-21	Uintah
	343	Pike, Lawrence	M	1897	Uintah
	344	Pike, Lloyd Norman	M	12-2-15	Uintah
	345	Pike, Lina Louise	F	4-26-37	Uintah
	346	Pike, Loren Jasper	M	1-27-12	Uintah

						BAND
—7	347	Pikutark, LaVera	F	10-19-41		Uintah
	348	Purdy, Sylvia Hendricks	F	10-25-22		Uintah
	349	Reber, Idessa Hackford	F	5-24-30		Uintah
	350	Reed, Calvin Stacey	M	11-15-24		Uintah
	351	Reed, Charles E. Sr.	M	9-22-87	ESTATE	Uintah
	352	Reed, Charles E. Jr.	M	4-8-11	ESTATE	Uintah
	353	Reed, Charles T.	M	11-26-22		Uintah
	354	Reed, Glen V.	M	4-4-19		Uintah
	355	Reed, Glinnis Joan	F	7-2-39	MM	Uintah
—9	356	Reed, Judy Gay	F	3-7-45		Uintah
—2	357	Reed, Linda	F	5-19-48		Uintah
—4	358	Reed, Joelone	F	8-1-46		Uintah
—5	359	Reed, Marjorie Ellen	F	2-28-43		Uintah
	360	Reed, Robert Merle	M	1-18-37	MM	Uintah
—48	361	Reed, St-eart Eugene	M	7-20-40		Uintah
—46	362	Reed, Louis Russell	M	12-5-42		Uintah
—38	363	Reed, Ronald Le Roy	M	7-19-44		Uintah

						BAND
—39	364	Reed, Franklin Terry	M	10-7-46		Uintah
—45	365	Reed, Margaret Sue	F	11-15-48		Uintah
—37	366	Reed, Cordie Mae	F	10-13-50		Uintah
—44	367	Reed, Lawanna Kay	F	6-15-52		Uintah
	368	Reed, Julian P.	M	6-13-26		Uintah
	369	Reed, Shirley J. Murdock	F	1-21-35		Uintah
—92	370	Reed, Donald Ellis	M	3-31-45		Uintah
—94	371	Reed, Juliann	F	10-19-48		Uintah
	372	Reed, Katherine	F	3-19-32		Uintah
–634	373	Reed, Barbara Jean	F	1950		Uintah
	374	Kenneth Ferris	M	3-26-26		Uintah
	375	Reed, Wilson J.	M	12-28-16		Uintah
–641	376	Reed, James —	M	1-1-47		Uintah
–642	377	Reed, —ane —	—	—48		Uintah
	378	———	—	———		Uintah
	379	Reed, Stacey Robb Sr.	M	1902		Uintah
	380	Reed, Melvin	M	3-27-37	MM	Uintah
–494	381	Reed, Rita Jean	F	4-7-30	MM	Uintah
2267	382	Reed, Stacey Robb Jr.	M	6-19-40		Uintah

					BAND
2268	383	Reed, Martin	M	10-28-41	Uintah
2269	384	Reed, Beatrice Kay	F	12-8-43	Uintah
2270	385	Reed, Henry	M	8-20-45	Uintah
2271	386	Reed, Dennis	M	12-8-46	Uintah
2272	387	Reed, Clarinda –ee	F	5-28-48	Uintah
2273	388	Reed, Lara	F	7-12-49	Uintah
	389	Reed, –illie C.	M	1897	Uintah
	390	Reed, Gloria	F	12-23-37 MM	Uintah
2495	391	Reed, Reva Ellen	F	1-23-40	Uintah
2503	392	Reed, Beverly Ann	F	7-28-46	Uintah
	393	Reed, William James	M	7-11-36	Uintah
	394	Reyos, Anita Reed	F	12-23-20	Uintah
1655	395	Reyos, Annette Marie	F	5-23-39	Uintah
2204	396	Reyos, Pa-le Deane	M	9-22-41	Uintah
1660	397	Reyos, Robert Gerald	M	11-15-42	Uintah
1656	398	Reyos, Glenda Jane	F	8-23-44	Uintah
1659	399	Reyos, Paulette Jean	F	12-6-45	Uintah
1658	400	Reyos, Linda Carol	F	12-21-47	Uintah

					BAND
1657	401	Reyos, Kenneth Charles	M	10-13-50	Uintah
1654	402	Reyos, Allen —	M	7-30-52	Uintah
	403	Rhodd, Louise J. Reed	F	5-26-17	Uintah
2341	404	Rhodd, Louis Raymond	M	3-4-39	Uintah
2340	405	Rhodd, Charles Melvin	M	3-23-45	Uintah
	406	Richardson, Keith L.	F	1881	Uintah
	407	Richman, Lalean Neilsen	F	12-10-35	Uintah
	408	Rochelle, Clara Van	F	1894	Uintah
2456	409	Russell, Reuben L.	M	6-18-22	Uintah
	410	Secakuku, Josephine	F	9-16-24	Uintah
1798	411	Sireech, Le—ood V.	M	4-19-45	Unc.
	412	Sixkiller, Lana Denver	F	3-6-18	Uintah
2214	413	Sixkiller, Judith	F	4-11-40	Uintah
2215	414	Sixkiller, Grover Walter	M	2-9-42	Uintah
2216	415	Sixkiller, —ry	M	9-10-43	Uintah
2217	416	Sixkiller, — Jr.	—	———	Uintah

					BAND
2218	417	Sixkiller, Pearl Nadine	F	8-16-48	Uintah
2219	418	Sixkiller, Kathleen	F	5-19-50	Uintah
2222	419	Sixkiller, Jack	M	8-28-52	Uintah
—25	420	Sandoval, Laverne	F	5-28-52	Whiteriver
	421	Smith, Roy	M	1886	Uintah
	422	Smith, Illo Pigeon	F	2-28-26	Uintah
	423	Sprouse, Margaret Rose Van	F	3-22-36	Uintah
	424	Steward, Hilda Taylor	F	1904	Uintah
	425	Steward, Mabel Josephine	F	10-19-32	Uintah
	426	Steward, Frances P.	F	2-18-35	Uintah
	427	Sutteer, Irma H. Harris	F	6-13-15	Uintah
—05	428	Sutteer, James Charles	M	4-17-37	Uintah
—26	429	Sutteer, Barbara Ann	F	12-9-40	Uintah
	430	Taylor, –rlyn	M	7-27-12	Uintah
	431	Taylor, Claud	M	8-29-08	Uintah
–223	432	Taylor, Myra L.	F	3-10-41	Uintah
–229	433	Taylor, Dennis Lee	M	4-16-46	Uintah

						BAND
	434	Taylor, Ernest LeRoy	M	1-10-23		Uintah
	435	Taylor, Norman (Kenneth Jorgensen)	M	8-29-25	ESTATE	Uintah
	436	Taylor, Richard Donald	M	5-8-28		Uintah
–230	437	Taylor, Patricia Ann	F	2-23-46		Uintah
–231	438	Taylor, Richanda	F	7-2-49		Uintah
	439	Taylor, Wayne Robert	M	2-1-35		Uintah
	440	Taylor, William Jr.	M	1900		Uintah
–707	441	Thompson, Laura L. Workman	F	6-24-16		Uintah
	442	Thompson, Laura L. Pike	F	12-5-29		Uintah
–232	443	Valladolie, Rose	F	5-5-49		Unc.
–233	444	Valladolie, Toney	M	8-6-50		Unc.
–235	445	Valladolie, Lynn	M	6-20-51		Unc.
–237	446	Valladolie, Jessie Camphi-	M	3-30-53		Unc.
	447	Van, Alfonso	M	9-16-13		Uintah
	448	Van, Alfonso Jr.	M	8-14-35		Uintah

						BAND
–239	449	Van, Dora Mae	F	2-21-44		Uintah
	450	Van, Lenice Marie	F	5-24-31		Uintah
	451	Van, Chester Wayne	M	6-11-40	ESTATE	Uintah
	452	Van, Edmond Charles	M	12-11-36		Uintah
–2—	453	Van, Edmond —, Jr.	M	11-28-39		Uintah
	454	Van, Jerry	M	7—31		Uintah
	455	Van, John Edmond	M	8-3-22		Uintah
2241	456	Van, Shiril Lee	F	3-5-46		Uintah
	457	Van, Phillip Jr.	M	1904		Uintah
	458	Van, Wyona	F	8-10-11		Uintah
	459	Wallace, Minnie Walkington	F	9-18-24		Uintah
	460	Walkington, Dennis	M	8-11-28		Uintah
	461	Walkington, William Blake	M	9-28-30		Uintah
	462	Wardle, Orlean P. Reed	F	7-31-09		Uintah
	463	Watts, Clara J. Young	F	5-6-36		Uintah
	464	Wilkerson, Helen Harris	F	11-13-25		Uintah
	465	Winn, LaDonna Kolb	F	4-8-27		Uintah

					BAND
466	Wash, Lillie Reed	F	10-7-00		Uintah
467	Wopsock, Letha Harris	F	2-19-17		Uintah
468	Wopsock, Henry	M	7-20-07		Whiteriver
469	Workman, Chalmers Wilfird	M	2-1-16		Uintah
470	Workman, Colleen Adele	F	5-25-36		Uintah
471	Workman, David Harris	M	11-29-06		Uintah
472	Workman, Glenn Arthur	M	7-12-35		Uintah
473	Workman, Glenda May	F	4-24-32		Uintah
474	Workman, Joseph Arthur	M	7-2-09		Uintah
475	Workman, Max Harris	M	10-18-27		Uintah
476	Workman, Minnie Pike	F	1895		Uintah
477	Workman, Theresa Taylor	F	1-27-82	ESTATE	Uintah
478	Workman, William —.	M	5-22-22		Uintah
479	Wyasket, B—	M	1-15-22		Uintah
480	Wyasket, Christine Shavanaux	F	12-14-31		Uintah
481	Young, Boyd	M	4-2-30		Uintah

					BAND
482	Young, George Albert	M	7-17-28		Uintah
483	Young, Lillian Van	F	1901		Uintah
484	Young, Gloria	F	3-13-34		Uintah
485	Young, Nelson Roy	M	9-23-26		Uintah
486	Young, Ronald Oran	M	9-12-37	MM	Uintah
487	Young, Jolene Daniels	F	4-8-39	MM	Uintah
488	Zufelt, Adiah Harris	F	2-18-00		Uintah
489	Zufelt, Dolores Hackforzd	F	11-24-32		Uintah
490	Zuniga, Nola	F	4-22-43		Uintah

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF UINTAH COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. RICKIE L. REBER, Defendant.	Case No. 021800320 FS

Hearing
Electronically Recorded on
February 26, 2003

BEFORE: THE HONORABLE A. LYNN PAYNE
Eighth District Court Judge

APPEARANCES

For the Plaintiff: EDWIN T. PETERSON
Uintah County Attorney
152 East 100 North
Vernal, UT 84078
Telephone: (435) 781-5436

For the Defendant: MICHAEL L. HUMISTON
1067 North 750 West
Provo, UT 84604
Telephone: (801) 654-1152

Transcribed by: Beverly Lowe, CSR/CCT

1909 South Washington Avenue
Provo, Utah 84606
Telephone: (801) 377-0027

* * *

[5] MR. PETERSON: Well, your Honor, the Hagen standard as articulated was in the appellate court case, and that case was overruled – was set aside.

MR. HUMISTON: That portion of the appellate court was not overturned, your Honor. That part was not addressed and is still binding.

MR. PETERSON: And the position of the State is is that it – the Hagen appellate decision is not binding upon this Court and it's not good law, and it was set aside by the state Supreme Court.

MR. HUMISTON: That portion was not set aside by either the state Supreme Court or the federal – or the United States Supreme Court. Unless there is an intervening state ruling I believe that –

THE COURT: There isn't anything to – there isn't anything for me to decide if your analysis is correct. All I have to decide is whether or not they're a federally recognized tribe and they don't claim to be a federally recognized tribe. So that's the beginning and the end of it.

MR. PETERSON: Yes, that's what the La Pierre decision says.

MR. HUMISTON: Your Honor, the law that's binding upon [6] this state through the 10th Circuit – through the 9th Circuit, in fact, which was where the La Pierre decision came from is that for hunting and fishing purposes a tribe does not have to be federally recognized. That is the standing law of the United States of the two circuits with all the Indians, the 9th and 10th Circuit. That is also the law –

THE COURT: Well, that's not binding upon this Court.

MR. HUMISTON: It is – Mr. Conway is a privy to the State of Utah and that ruling is binding. That's now res judicata upon this court.

THE COURT: Federal cases are never binding upon the state court unless they're United States Supreme Court cases. As a matter of law they're not.

MR. HUMISTON: As far as Indian law is exclusive, and under state law – under the state constitution the state – congress and the federal courts reserve – retain exclusive jurisdiction over Indian affairs.

THE COURT: Well, it's just – it just isn't the case that federal law and federal decisions are binding upon state courts. That's just not the law.

MR. HUMISTON: We must have gone to different law schools, then.

THE COURT: Well, I guess we did. If that were the case, if you'll go back historically, which was the decision that went to the United States Supreme Court?

[7] MR. PETERSON: Hagen.

THE COURT: Hagen. You had a preexisting federal 10th Circuit decision.

MR. HUMISTON: Yes.

THE COURT: And then you had the Utah Supreme Court taking a directly conflicting decision, and if the – and if you get into this area very deeply you will see, as is evident from the Hagen case, that the 10th

Circuit Court decisions are not binding. They are legal precedents, but they are not binding like I am bound to follow the appellate court decisions of the State of Utah.

MR. HUMISTON: Your Honor, I am extremely familiar with this area. The Ute tribe had the opportunity to assert the 10th Circuit ruling as res judicata before the Utah Supreme Court, and the record is very clear before that court that they looked at the parties and said, "Since you have not asserted that as res judicata we are not going to look at it," and the US Supreme Court record was equally clear that "we don't know why they didn't assert it as res judicata because it is, but since they have not made that argument we are not going to apply it for them."

THE COURT: No, and I'm –

MR. HUMISTON: That's what the ruling says, your Honor.

THE COURT: I disagree. I'm not bound to follow the 10th Circuit.

MR. HUMISTON: But you –

[8] THE COURT: It's legal precedent, but I'm not bound to follow it in the way I'm bound to follow the Supreme Court or –

MR. HUMISTON: Is there a reason then why the State of Utah would go before the 10th Circuit and argue it if they're not even bound by that court?

THE COURT: Well, I'm not State of Utah. The State of Utah is a party in this Court, but this Court is not the State of Utah.

MR. HUMISTON: I realize that, your Honor. What I'm saying is the State of Utah as represented by Mr. Peterson is bound by the rulings of the 10th Circuit.

THE COURT: As to what specifically?

MR. HUMISTON: As to rulings to which they are a party. When the attorney general of the State of Utah goes to Denver and argues on behalf of the State of Utah before the 10th Circuit, if the 10th Circuit had no precedent for the State of Utah, there would be no need for him to be there.

THE COURT: Specifically, though, what are you asking me to – what do you think this Court is bound to by the 10th Circuit?

MR. HUMISTON: The ruling that a tribe does not have to be federally recognized in order to assert treaty hunting and fishing rights.

THE COURT: No, I don't think I'm bound to follow that.

MR. HUMISTON: Well, do you believe Mr. Conway is bound [9] to follow that?

THE COURT: I don't know who Mr. Conway is.

MR. HUMISTON: Mr. Conway is the Utah Director of Wildlife Resources who is a party to that lawsuit and a party to that ruling. Do you believe he is bound by that ruling?

THE COURT: I don't know about Mr. – I mean what does he have to do with this case?

MR. HUMISTON: Well, you're presenting the proposition that a ruling to which the State of Utah is a party is not binding upon the State of Utah. Now Mr. Conway is not the State of Utah, he is a privy of the State of Utah. He is an agent of the State of Utah. So as a general proposition of law, a ruling described by the 10th Circuit as *Timpanogos Tribe vs. Conway* to which Mr. Conway is a party is binding upon the parties to that action, would that ruling not be binding upon Mr. Conway?

THE COURT: If you are saying that the principle of res judicata apply, and that is is that parties who have litigated a case fully in another jurisdiction are bound by that, I may agree with you. But if you are saying that I need to follow the law as pronounced by the 10th Circuit blindly – in other words say they have come up with a particular ruling in another case not involving other of the same parties, then I disagree with you.

MR. HUMISTON: But then by the same token the 9th circuit La Pierre ruling is equally unbinding upon this Court.

THE COURT: I don't think it is binding.

[10] MR. HUMISTON: Well, and I agree. Apparently the Court was going the direction that the lower court ruling in Hagen to the extent it is overruled is still applicable. I certainly have submitted that on my briefs and that –

THE COURT: I'll have to go back and read the Supreme Court case in Hagen, which I haven't had an opportunity to do. I don't know. I don't know. Mr. Peterson tells me that the whole thing was overruled, and I don't know that that's the case.

MR. HUMISTON: It's not.

THE COURT: But I am bound to follow the law as pronounced by the appellate courts in the State of Utah, even though if I were left to my own devices I'm – in particular cases. I'm not talking about this case. I'm just not free to make up my mind on issues that have been settled in the State of Utah by the appellate courts.

That's not true – that's not true as to federal courts. It may be settled in the federal court in other cases, I'm not bound to follow those. If you're saying that principles of res judicata where a particular party has litigated an issue fully in another jurisdiction, are they bound by principles of res judicata, maybe. You may be correct on that. I get – we got far off the subject of that.

* * *

J. Reuel Armstrong, Solicitor, *Memorandum to Commissioner of Indian Affairs, Re: Interpretation of Section 4 of the Act of August 27, 1954 (68 Stat. 868)*, M-36305, September 21, 1955.

You have requested my opinion on the power of the Secretary to transfer a minor from the proposed full-blood roll to the mixed-blood roll upon application of the parent for himself and his minor children, pursuant to section 4 of the Act of August 27, 1954, Public Law 671-83rd Congress (68Stat. 868). [25 U.S.C. 677c].

Section 4 states that any member of the tribe whose name appears on the proposed roll of full-blood members may apply to the Superintendent to become identified with and part of the mixed-blood roll *provided* that before such transfer is made the Secretary shall first certify that in his opinion such change in status is not detrimental to the best interests of the applicant. The provisions of the Act are silent with respect to the transfer of a minor to the mixed-blood roll. In this regard it differs from the Klamath Withdrawal Act of August 13, 1954 (68 Stat. 718) which specifically gives the head of the family the right to file for himself and his minor children an election to withdraw from the tribe.

Section 22 provides for the protection by the Secretary of the rights of minors and other members of the tribe in need of assistance and, further, that the appointment of guardians pursuant to State law will not be required until Federal supervision has terminated. The indications of this section and other provisions of the Act are that this protection was intended for the benefit of members of the mixed-blood roll. The restrictions on their trust and redestricted property are to terminate in accordance with

Section 16 and the assets of the mixed-blood group are to be distributed to the individual members under Section 13.

It was apparent that the Act would result in some members of a family being placed on the full-blood roll and others on the mixed-blood roll. If it were contemplated that the integrity of the family was to be maintained with respect to their membership some provision it seems would have at least been made allowing members of a family to transfer from the mixed-blood roll to the full-blood roll. An examination of the legislative history of the Act is of no aid on the question posed. In the absence of any express language in the Act or Congressional intent shown in its legislative history it must be concluded that the Secretary does not have such power, particularly when a transfer of a minor from the full-blood to the mixed-blood roll would result in the taxation and removal of restrictions on his trust and restricted property and in loss of the right in Section 23 to share in Federal services available to Indians because of their status as Indians.

Cole

(3)

No. 07-103

FILED
SEP 17 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The Supreme Court of the United States

RICKIE L. REBER, TEX WILLIAM ATKINS, STEVEN PAUL THUNEHORST & C.R.,

Petitioners,

vs.

STATE OF UTAH,

Respondent.

On Petition For Writ Of Certiorari To The Utah Supreme Court

BRIEF IN OPPOSITION

MARK L. SHURTLEFF
Utah Attorney General
KIRK M. TORGENSEN
Chief Deputy Attorney General
J. FREDERIC VOROS, JR.*
Chief, Criminal Appeals Div.
JOANNE C. SLOTNIK
Assistant Attorney General
Counsel for Petitioner
160 East 300 South, 6th Floor
Post Office Box 140854
Salt Lake City, UT 84114-0854
(801) 366-0180

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Should this Court consider three factual issues governed by state law that were not decided by the Utah Supreme Court and are irrelevant to its decision?

2. Should this Court consider two issues related to the Ute Partition Act that are not dispositive and were not decided by the Utah Supreme Court?

3. Should this Court engage in further review of a correct ruling from the Utah Supreme Court that is based on well-settled federal law?

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II. The two questions Petitioners present related to the Ute Partition Act are not dispositive of the jurisdictional issue before this Court and have not been ruled upon by any Utah appellate court 13

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STATEMENT

1. *Summary of the Facts.* During the 2002 Utah deer hunt, Petitioner Reber's son, C.R., shot a trophy deer in Indian country with his father's assistance. Pet. App. 2, ¶ 3; R. 584: 157. When conservation officers from the Utah Division of Wildlife Resources stopped Petitioners at a checkpoint, they observed a large buck in Petitioner's truck bed. The deer did not have a state hunting permit, license, or tag attached to it, as required by state law. R. 584: 158.

During the same hunting season, Petitioners Thunehorst and Atkins killed another, smaller deer in Indian country. Similarly, neither of them had a hunting permit.

The parties stipulated that each of the three adult petitioners was 1/16 Indian by blood and that they were not members of any federally-recognized Indian tribe. Resp. App. 1, 13-14.[1]

2. *Summary of the proceedings.* Petitioner Reber was charged with aiding or assisting in the wanton destruction of wildlife, a third degree felony, in violation of Utah Code Ann. §§ 23-20-4(3)(a). Pet. App. 2, ¶ 3. Petitioner C.R. was referred to juvenile court. *Id.* Petitioners Thunehorst and Atkins were charged with aiding or assisting in the wanton destruction of wildlife, a class A misdemeanor, in violation of Utah Code Ann. § 23-20-4(3)(b). *Id.* at ¶ 4.

---

[1] The juvenile was 1/32 Indian by blood.

Petitioner Reber filed a motion to dismiss for lack of jurisdiction. R. 12-13. After extensive briefing and several hearings, the trial court denied the motion, upholding state jurisdiction because Petitioner Reber had failed to establish he was Indian for purposes of criminal jurisdiction. Resp. App. 11-21. A jury tried Petitioner Reber and convicted him as charged. R. 505-06, 564. The court ordered a suspended prison term of zero-to-five years, restitution of $4,000 payable to the Utah Department of Wildlife "Stop Poaching" Fund, a fine of $1,250 or 250 hours of community service, and three years of probation with conditions attached. R. 562-65.

Petitioner Reber timely appealed, seeking review of the trial court's pre-trial jurisdictional rulings. R. 566-67. The Utah Court of Appeals consolidated Petitioner Reber's appeal with appeals raising identical issues filed by Petitioners Thunehorst and Atkins.[2] The Utah Court of Appeals vacated the convictions, concluding that "the crimes occurred in Indian Country governed by the Ute Tribe. Because the Ute Tribe is the victim, the State does not have jurisdiction." Pet. App. 21, ¶ 13. Having thus held that the State lacked jurisdiction by virtue of the Ute Indian Tribe's status as a victim, the court did not address any other issues raised by Petitioners. *Id.* at 15, n.1.

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[2] Petitioners Thunehorst and Atkins agreed at this juncture to be bound by the outcome of Petitioner Reber's appeal.

The Utah Court of Appeals denied the State's petition for rehearing. Pet. App. 40-41. The State filed a petition for writ of certiorari in the Utah Supreme Court. Petitioners filed a cross-petition. The Utah Supreme Court granted the petitions as to three issues. Two addressed whether the Ute Indian Tribe possessed unfettered regulatory or property interests over all hunting throughout Indian country such that the Tribe would be the victim of any illegal hunting in Indian country. The third addressed whether Petitioners had established they were Indians. Pet. App. 3, ¶ 7. The Court further ordered that the juvenile court case adjudicating Petitioner Reber's son, C.R., be consolidated into this case. *Id.* at ¶ 1.

3. *Utah Supreme Court decision.* Focusing entirely on jurisdiction, the Utah Supreme Court unanimously reversed the Court of Appeals, citing at the outset the undisputed governing principle that "[w]ithin Indian country, state jurisdiction is limited to crimes by non-Indians against non-Indians and victimless crimes by non-Indians." Pet. App. 4, ¶ 9 (quoting *Solem v. Bartlett*, 465 U.S. 463, 465 n.2 (1984) (citation omitted)). The Utah Supreme Court held both that unlawful hunting is a victimless crime and that Petitioners had failed to establish that they were Indians. *Id.* at 4, ¶ 9; 8, ¶19; 11, ¶ 26. Because these Indian country crimes were both victimless and committed by non-Indians, the Utah Supreme Court held, the State properly exercised jurisdiction over Petitioners. *Id.* at 12, ¶ 27.

Petitioners' crimes were victimless. The Utah Supreme Court determined that because Petitioners' crimes were victimless, the Ute Indian Tribe could not be a victim. The Court articulated two reasons underlying this conclusion.

First, the Ute Indian Tribe could not be a victim because it lacked a regulatory interest in Petitioners' unlawful hunting under the factual circumstances of this case. Tribes cannot regulate hunting and fishing by non-Indians on land within the geographical boundaries of Indian country that is not owned by or held in trust for Indians, either individually or as a Tribe. *Id.* at 6-7, ¶¶ 15-16 (citing *Montana v. United States*, 450 U.S. 544 (1981)). Here, Petitioners did not dispute that the crimes occurred on non-Indian-owned land. *Id.* Consequently, lacking any regulatory interest, the Tribe could not be a victim. *Id.* at 7, ¶ 16.

Second, the Ute Indian Tribe could not be a victim because it did not have a property interest in the deer. Indeed, no entity "owns" wildlife in the sense of having an enforceable property interest in wild animals on the hoof. *Id.* at 8, ¶ 17 (citing *Douglas v. Seacoast Products, Inc.*, 431 U.S. 265, 284 (1977)). This conclusion has been applied explicitly to Indian tribes. *Id.* at ¶ 18 (citing *White Mountain Apache Tribe v. Arizona Dep't of Game & Fish*, 649 F.2d 1274, 1283 (9th Cir. 1981)). Because the Ute Indian Tribe had no protected property interest in wildlife, it could not be a victim by virtue of such an

interest in the deer that were unlawfully shot. *Id.* at 8-9, ¶ 19.

Based on these two rationales, the Utah Supreme Court concluded that, "[o]ther than the wildlife itself, these crimes have no victims." *Id.* at 8-9, ¶ 19.

Petitioners are not Indians. The Utah Supreme Court also held that Petitioners failed to establish they are Indians. *Id.* at 9-12. In *United States v. Rogers*, 45 U.S. 567 (1846), this Court articulated a two-part test for determining Indian status. To claim the status of an Indian, a person must show both that he possessed a sufficient quantum of Indian blood and that he is recognized as an Indian by a Tribe or the federal government. The Utah Supreme Court held that Petitioners had failed to meet both of these required prongs. *Id.* at 9, ¶ 21.

The first prong of the *Rogers* test, requiring a showing that Petitioners possess a significant quantum of Indian blood, was dispositive. *Id.* Petitioners stipulated to possessing only 1/16 Indian blood. Resp. App. 1, 13-14. The Utah Supreme Court rejected petitioners' claim of Indian status because no court has held 1/16 Indian blood sufficient under *Rogers*. Pet. App. 9, ¶ 22. Moreover, even assuming that 1/16 Indian blood would suffice, the Court also rejected Petitioners' claim because the ancestors through whom they claimed Indian blood had been listed on the Ute Partition Act final termination roll. *Id.* at 9-10, ¶ 23. Petitioners, as descendants of terminated Indians, thus had zero Indian blood for purposes of

recognition by the federal government. *Id.* (citing *United States v. Von Murdock*, 132 F.3d 534, 536 (10th Cir. 1997). Failing the first prong of *Rogers* for either of these two articulated reasons defeated Petitioners' claim of Indian status.

While the Utah Supreme Court need not have reached the second prong of the *Rogers* test, requiring recognition as an Indian by a tribe or society of Indians or by the federal government, it nonetheless chose to do so. *Id.* at 9, ¶ 21. The Court noted that the Uintah band is not recognized as a tribe by the federal government and, further, that the Uintah band has no existence apart from the federally-recognized Ute Tribe. *Id.* at 10-11, ¶ 24 (citing *Von Murdock*, 132 F.3d at 541). Because under federal law the Uintah band exists only within the Ute Tribe and because Petitioners concede they are not members of the Ute Tribe, their claim also fails under the second prong of *Rogers*. *Id.* at 11, ¶ 25 .

Thus, both because the Ute Indian Tribe is not a victim and because Petitioners failed to establish they are Indians within the meaning of federal law, the State had jurisdiction. Accordingly, the Utah Supreme Court reversed the decision of the Utah Court of Appeals and reinstated the convictions. *Id.* at 12, ¶ 27. It did not, however, remand the case to the court of appeals for consideration of the other issues Petitioners had raised, but which the court of appeals had not reached. Petitioners did not file a petition for rehearing to request a remand for consideration of

those issues. Instead, they filed a Petition for Certiorari in this Court.

REASONS FOR DENYING THE WRIT

The only issue decided by the Utah Supreme Court in this case was whether the State of Utah could exercise jurisdiction over hunting crimes committed within the geographic boundaries of Indian country. Yet none of the five questions presented in the Petition for Writ of Certiorari has any bearing on that determination. Rather, Petitioners seek review of non-dispositive questions unaddressed by any Utah appellate court.

The first three questions presented by the Petition are fact-specific matters of state law that are irrelevant to the jurisdictional question, have not been addressed by any Utah appellate court, and raise no recurring issues of general concern.

The fourth and fifth questions presented raise issues of federal law related to the Ute Partition Act that are unnecessary to determining whether Petitioners are Indian for purposes of criminal jurisdiction in Indian country. That is, regardless of how a court might construe the Ute Partition Act, Petitioners nonetheless lack Indian status under the dispositive *Rogers* test. Moreover, they have not preserved any grounds for challenging the Utah Supreme Court's holding that they are not Indian under *Rogers*.

Finally, the decision of the Utah Supreme Court is correct as a matter of law, relying on well-settled precedent from this Court and from the Tenth Circuit.

I. The first three questions Petitioners present – involving interpretation of a state statute governing mistake of law, elements of an offense charged in juvenile court, and alleged judicial bias – raise matters of state law that are irrelevant to the question decided by the Utah Supreme Court, have not been ruled upon by any Utah appellate court, and do not involve recurring issues of general importance.

The first three questions Petitioners present all turn on routine applications of state law that are irrelevant to the question decided by the Utah Supreme Court in this case. Moreover, no Utah appellate court has ruled on any of these questions. None is appropriate for certiorari review.

First, Petitioners claim that, in determining intent, a jury should have been permitted to assess the reasonableness of their reliance on two federal cases. *See* Pet. 12-14. This question refers to a trial court ruling interpreting a state statute governing mistake of law as a defense. *See* Pet. App. 31-37, 47. Whether the trial court correctly interpreted a state statute presents a narrow and case-specific question of state law, wholly lacking in implications of broad scope. *See Stone v. So. Ill. & M. Bridge Co.*, 206 U.S. 267, 272-73 (1907) (declining to consider question of state law).

Moreover, the two cases on which Petitioners assert they reasonably relied wholly fail to support their positions. *Timpanogos Tribe v. Conway*, 286 F.3d 1195 (10th Cir. 2002), was an interlocutory appeal from the denial of the state's motion to dismiss under rule 12(b)(6), Federal Rules of Civil Procedure. *Conway*, 286 F.3d at 1198. In that context, a panel of the Tenth Circuit determined that the Timpanogos Tribe "may establish federal question jurisdiction in asserting its hunting rights" even though it was not a federally-recognized tribe. Pet. App. 65. This ruling merely permitted the suit to continue; the court granted no other relief at that time. *Id.* at 63-66. Nowhere does the case suggest that alleged Uintah band members can hunt without a state permit on the land at issue here. Petitioners fail to explain how or why a ruling on a motion to dismiss caused them to reasonably believe that they were exempt from state law forbidding hunting without a state permit.

The other case on which Petitioners purportedly relied is *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997) ("*Ute V*"); Pet. App. 48-57 (excerpt only). *Ute V*, however, is a boundary diminishment case that determined which lands within the Uintah Valley Indian Reservation were no longer Indian country.[3] *Ute V* did not change the Indian country

[3] The Uintah Valley reservation forms the northern section of what is today the Uintah and Ouray reservation. The Uncompahgre reservation forms the southern section. *See* Pet. App. 17, ¶ 8 (quoting *Von Murdock*, 132 F.3d at 540). *Ute V* addresses

(Continued on following page)

status of the National Forest lands and the Uncompahgre reservation, where Petitioners committed their crimes. *Id.* at 1515; R. 50; R. 584: 191; Resp. App. 11-13. To the extent that *Ute V* has any relevance to this case, it stands for the undisputed proposition that the land on which Petitioners committed their crimes lies within Indian country. As was true of *Conway, Ute V* nowhere suggests that alleged Uintah band members can hunt without a state permit on the non-Indian-owned land at issue here. Consequently, any reliance by Petitioners on *Ute V* would have been unreasonable.[4]

The second issue raised by Petitioners – whether the juvenile court properly considered all elements of the offense with which the juvenile was charged – presents another fact-specific question not ruled upon

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diminishment of Indian country within the northern section only.

[4] The Utah Supreme Court did express concern with the following passage from *Ute V*: "Under our approach, the Tribe and the federal government retain jurisdiction over all trust lands, the National Forest Lands, [and] the Uncompahgre Reservation. . . ." Pet. App. 56 (quoted in Pet. App. 5-6, ¶ 12). This language must be read in the context of the language that follows it: "Indian country extends to all trust lands, the National Forest lands, [and] the Uncompahgre. . . ." Pet. App. 57. Together, the fair import of these statements is that trust lands, National Forest lands, and the Uncompahgre remain Indian country, governed by the general jurisdictional rule that, unless the perpetrators and any victims are non-Indian, the tribe or federal government will have jurisdiction. *See Solem*, 465 U.S. at 465 n.2. That is precisely how the Utah Supreme Court ultimately read that language from *Ute V*.

by the Utah Supreme Court. *See* Pet. 14. Moreover, Petitioners have inadequately briefed the issue, both in the Utah appellate courts and now in their Petition for Certiorari. *See* Sup. Ct. R. 24(1)(i). Petitioners present their argument in one conclusory sentence, devoid of record citations, wholly failing to articulate their specific argument or any implications of a general or recurring nature that would compel certiorari review. *See* Pet. 14. This claim does not warrant certiorari review by this Court. *See United States v. Reading*, 228 U.S. 158, 160 (1913) (declining to reach inadequately-briefed issue).

Finally, the third issue – whether the trial judge was biased against the adult petitioners – presents yet another fact-based question of state law. *See* Pet. 14. Petitioner Reber filed a motion to disqualify the trial judge, who correctly certified the matter to the presiding judge of the district, as mandated by the Utah Rules of Criminal Procedure. R. 277, 293. The presiding judge denied the motion, describing it as "woefully late," untimely by almost 11 months and unjustified by any good cause. R. 295. Even on the merits, Petitioners' complaint that the trial court maintained it "was under no obligation to follow federal law" is incorrect on its face. Pet. 9. The trial court simply made the unremarkable observation that it was not bound by the rulings of federal courts of appeals. Pet. App. 99-105. Nonetheless, the court consistently applied federal Indian law in explaining the legal rationale underlying its jurisdictional rulings. Resp. App. 2-4, 15-21. Under these circumstances,

there is no conceivable justification for certiorari review by this Court.

Although Utah appellate courts have not ruled on the first three questions presented, Petitioners nonetheless want this Court to consider them. This Court does not typically review questions in the first instance that have not been addressed below, *Adarand Const., Inc. v. Mineta*, 534 U.S. 103, 109-10 (2001); *National Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459, 470 (1999). This case presents no exceptional circumstances that would warrant departure from that usual practice. *See Duignan v. United States*, 274 U.S. 195, 200 (1927) (explaining that only in exceptional cases will his Court review questions not first ruled upon below).

Had Petitioners wanted a full hearing on these state law issues, they had the opportunity to file a petition for rehearing in the Utah Supreme Court. Petitioners could have requested a remand to the Utah Court of Appeals for full consideration of the issues that had been raised but not considered when that court disposed of the case on jurisdictional grounds. Instead, Petitioners chose to forego that remedy and seek from this Court a ruling in the first instance on these state law questions. Because state court is the proper forum for resolution of state law issues, because the Utah Supreme Court has not ruled on these issues, and because they present no exceptional circumstances warranting review by this Court, the Petition should be denied.

II. The two questions presented concerning the Ute Partition Act are not dispositive of the jurisdictional issue before this Court and have not been ruled upon by the Utah Supreme Court.

Petitioners present two questions related to the proper legal interpretation of the Ute Partition Act: whether the Act expelled the Uintah band from the Ute Indian Tribe; and whether the Act affected non-Utes born prior to its enactment. Pet. i. These questions are not dispositive because the Utah Supreme Court referenced the Ute Partition Act only to explain a secondary ground for holding that Petitioners are not Indian. Because even absent the secondary ground, the primary ground would independently defeat Petitioners' claim of Indian status, certiorari on the two Ute Partition Act questions is not warranted.

To explain its conclusion that Petitioners had failed to establish that they were Indian, the Utah Supreme Court relied on this Court's decision in *Rogers*, articulating the controlling two-part test for determining Indian status. Pet. App. 9-12, ¶¶ 21-26. A person claiming Indian status must satisfy both parts of the test. The first part requires that the claimant establish "a significant degree of Indian blood." *Id.* at 9, ¶ 21. No court has ever held that 1/16 Indian blood, to which Petitioners stipulated, satisfies the first part of the *Rogers* test. *Id.* at 9, ¶ 22.

Because Petitioners did not satisfy the first part and *Rogers* requires that both parts be satisfied, the Utah Supreme Court rejected Petitioners' claim of Indian status.

Moreover, the Petition does not challenge either the applicability of the *Rogers* test or the Utah Supreme Court's ruling that 1/16 Indian blood is insufficient to satisfy the first prong. Petitioners have thereby conceded the correctness of these matters for purposes of certiorari review.

The Utah Supreme Court also offered a secondary rationale for rejecting Petitioners' claim under the first prong of *Rogers*, noting that "[e]ven were we to conclude that 1/16th Indian blood meets the requirement in *Rogers*, defendants would still fail to establish their Indian status." *Id.* at 9, ¶ 23. The Utah Supreme Court explained that because the ancestors through whom Petitioners claimed Indian status were on the Ute Partition Act final termination roll, Petitioners had zero Indian blood for purposes of the *Rogers* blood quantum analysis. *Id.* at 9-10, ¶ 23 (quoting *Von Murdock*, 132 F.3d at 541). Whether Petitioners have zero Indian blood, as the Ute Partition Act teaches, or 1/16 Indian blood, as they themselves stipulated, makes no difference to the outcome of the case. Either way, they are not Indians under *Rogers*. For this reason, certiorari review of issues related to the Ute Partition Act is not warranted.

The Petition ignores *Rogers* entirely. Instead, it focuses on the Court's secondary reference to the Ute Partition Act, seeking to bootstrap issues not addressed by the Utah Supreme Court into a certiorari-worthy stance. However, Petitioners' insistence that they are members of the Uintah band, that the Uintah band exists separately from the Ute Indian Tribe, and that the Ute Partition Act has no effect on their hunting rights are irrelevant to the disposition of the jurisdictional issue. It turns on the *Rogers* test. Because Petitioners stipulated they have no more than 1/16 Indian blood and their Petition does not challenge the *Rogers* test, the inquiry ends. Petitioners are not Indian for purposes of criminal jurisdiction in Indian country. No further analysis is necessary.

III. The decision of the Utah Supreme Court is correct.

The writ should also be denied because the Utah Supreme Court correctly held that the State of Utah has jurisdiction over Petitioners under *Solem*, 465 U.S. at 465 n.2. The court correctly ruled both that Petitioners are not Indian and that hunting is a victimless crime. Neither of these holdings conflicts with decisions of the Tenth Circuit or any other federal court of appeals.

First, as discussed above, the Petition does not challenge the Utah Supreme Court's conclusion that 1/16 Indian blood falls well short of the quantum

required by the first prong of the *Rogers* test. Nor does the Petition cite any cases holding that 1/16 Indian blood is sufficient under *Rogers*. For this reason alone, the Utah Supreme Court correctly rejected Petitioners' claim of Indian status. Having failed one prong of the *Rogers* test, Petitioners cannot prevail in their attempt to establish Indian status.

Although the Utah Supreme Court need not have reached the second *Rogers* prong, having done so, it correctly rejected Petitioners' claim that the Uintah band enjoyed a separate existence from the Ute Indian Tribe, thus according Petitioners the right to hunt without a state permit. Pet. App. 11, ¶ 25. The Tenth Circuit, deciding a claim identical to Petitioners' here, has squarely held that Uintah band members possess no right to hunt and fish independent of the Ute Indian Tribe. *See Von Murdock*, 132 F.3d at 541, *cert. denied*, *Von Murdock v. United States*, 525 U.S. 810 (1998). Without offering a cogent legal rationale for departing from this settled law, Petitioners seek to relitigate the matter and evade federal caselaw that is directly on point. *See also United States v. Felter*, 752 F.2d 1505 (10th Cir. 1985) (and cases cited therein). The Utah Supreme Court properly rejected this attempt.

Second, the Utah Supreme Court correctly held that hunting is a victimless crime and, accordingly, that the Ute Indian Tribe was not the victim of Petitioners'

poaching.[5] Pet. App, 8-9, ¶ 19. Because the Petition for Certiorari does not challenge the ruling that hunting is a victimless crime, the ruling is not subject to further review by this Court. Moreover, the ruling is correct. *See Montana v. United States*, 450 U.S. 544, 563-65 (1981) (tribe lacks a regulatory interest in hunting by non-Indians on land geographically located within Indian country but neither owned nor held in trust for an individual Indian or Indian tribe); *Douglas*, 431 U.S. at 284 (tribe lacks a property interest in the deer because no entity can claim a proprietary property interest in wild animals on the hoof).

Because the decision of the Utah Supreme Court is firmly rooted in a correct interpretation of governing federal law, certiorari should be denied.

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[5] The Ute Indian Tribe itself has never claimed to be a victim. The Tribe has filed amicus curiae briefs on behalf of the State's position in the Utah Court of Appeals, in the Utah Supreme Court, and in this Court.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

MARK L. SHURTLEFF
Utah Attorney General
KIRK M. TORGENSEN
Chief Deputy Attorney General
J. FREDERIC VOROS, JR.*
Chief, Criminal Appeals Div.
JOANNE C. SLOTNIK
Assistant Attorney General
Counsel for Petitioner
Utah Attorney General's Office
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854
(801) 366-0180

**Counsel of Record*

**IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR UINTAH COUNTY,
STATE OF UTAH**

STATE OF UTAH,	:	RULING
Plaintiff,	:	(Filed Sep. 9, 2003)
vs.	:	Case No.: 021800320
RICKIE L. REBER,	:	
Defendant	:	

This matter came before the Court on June 3, 2003 for hearing. At the hearing the parties stipulated that:

1. The Defendant's mother carried 1/8 "Indian Blood", and was named on the Termination Proclamation in 1961.[1]

2. The Defendant's father does not have any "Indian Blood".

3. The Defendant is 15/16 non-Indian by blood and 1/16 Indian by blood.

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[1] In 1954 Congress passed the Ute Termination Act, August 27, 1954, Ch 1009, 68 State [sic] 868, which is now found at 25 U.S.C. 677. "The Termination Proclamation, contemplated by Section 23 of the "Act", 25 U.S.C. Section 677v., was issued and published by the Secretary effective at midnight August 27, 1961. 26 Fed. Reg. 8042." *Affiliated Utes v. United States* 406 U.S. 128 at p 139; see also *United States v. Felter,* 546 F. Supp. 1002 (Utah D.C. 1982), at page p. 1006.

4. The Defendant is not a member of any Indian Tribe recognized as a Tribe by the United States Government.

5. The Defendant is 51 years old. He was born in Roosevelt and lived in Lapoint, Utah until he was 22. He has not lived in Indian Country since he was 22.

6. The Defendant does not now claim to be a member of the "Timpanogos Tribe".

7. The Defendant does not maintain that the permit which he produced when he was first contacted by law enforcement is valid. He does maintain that, at the time, he believed that the permit was valid.

This Court is bound by the decision of the Utah Supreme Court in *State v. Perank,* 858 P.2d 927 and *Hagen v. Utah,* 510 U.S. 399. Each of these cases held that the exterior boundaries of the Uintah Indian Reservation has been diminished and that there is no outer boundary to the reservation. The United States Supreme Court noted: "The operative language of the 1902 Act provided for allocations of reservation land to Indians, and that all the unallotted lands within said reservation shall be restored to the public domain". (At 412) . . . " It follows that when lands so reserved were 'restored' to the public domain – i.e., once again opened to sale or settlement – their previous public use was extinguished" (at 412). The Court then noted that when lands were returned to public domain, this stripped the land of reservation status

(at p412). Finally the Court indicated that "our cases considering operative language of restoration have uniformly equated it with a congressional purpose to terminate reservation status." (at p.413). Finally the Court held: "In light of our precedents, we hold that the restoration of unallotted reservation lands to the public domain evidences a congressional intent with respect to those lands inconsistent with the continuation of reservation status."

Federal law defines Indian Country to include land within: Indian Reservations, dependent Indian Communities, and Indian Allotments. 18 U.S.C. 1151 (a), (b), (c). Federal case law also reserves jurisdiction of crimes which occur within "Indian Country" involving an Indian as a victim to the tribes or the Federal Government. 18 U.S.C. 1152; *Duro v. Reina,* 495 U.S. 676. However, State Courts have jurisdiction to prosecute crimes which occur within Indian Country where the defendant and victim are not Indian. *Williams v. U.S.,* 327 U.S. 711; *State v. Roedl,* 155 P.2d 741 (Utah 1945). Federal Statutes do not define "Indian" for criminal jurisdictional purposes. In *United States v. Rogers,* 45 U.S. (4 How.) 567, 572-73 (1846), the United States Supreme Court suggested two factors to be evaluated in determining who is an Indian: (1) Whether the individual has a significant degree of Indian blood; and (2) Whether the individual has been recognized as an Indian by a tribe, or society of Indians, or by the Federal Government. The Rogers test for determining Indian status has been adopted by the Utah Appellate and Supreme Courts.

State of Utah v. Hagen, 802 P.2d 745, 748 (Ut. App. Ct. 1990); *State of Utah v. Perank,* 858 P.2d 927; 932 (Ut. S. CT., 1992). Until the Utah Supreme Court announces a new standard, this Court is bound by the *Hagen* and *Perank* cases. Therefore, this Court will follow the Rogers test in determining whether the Defendant is an Indian. Any argument that Utah should follow the test announced in *Lapier vs. McCormick,* 986 F.2d 303 should be addressed to the Supreme Court.[2]

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[2] Some have argued that Indian status, for the purposes of determining Federal jurisdiction under section 1152 and 1153 should be based entirely upon membership in a Federally recognized Indian Tribe. This test would allow Indians to make their own determination of "Indian" status. Reliance upon tribal membership would also provide an understandable and workable standard. It would avoid consideration of such subjective and transitory issues as self-concept as being Indian and recognition as being Indian within Indian Society. It further avoids the quagmire encountered in making a determination of "Indian" status based upon Federal recognition. Federal Statutes and Regulations which define "Indian" are inconsistent and confusing. Individuals are defined as "Indian" for some purposes and programs, but are not defined as "Indian" for other purposes and programs. Where an individual comes within some, but not all, federal definitions, where does the Court draw the line in determining "Indian" status. Is it sufficient if an individual meets at least one federal definition; or must he be recognized within "most" definitions; or perhaps he must meet all federal definitions of "Indian". A definition of "Indian" for the purpose of applying section 1152 which relies upon membership in a Federally recognized Indian tribe provide a much more workable standard than the test set forth in *Hagen.* Nevertheless, most courts who have considered this issue have adopted the *Hagen* test.

Federal statutes do not address the issue of who has the burden to prove that a defendant (or victim) is an Indian or that the crime occurred in "Indian Country". The Utah Appellate Court in *Hagen* stated: "The State properly concedes that the prosecution was required to prove jurisdiction, i.e., that defendant was not an Indian, albeit only by a preponderance of evidence." The Hagen Court cited *State v. Sorenson,* 758 P.2d 466, 469-470, as authority for the proposition that the State had the burden of showing that a defendant was not an Indian. However, the issue in *Sorenson* concerned territorial rather than personal jurisdiction. While territorial jurisdiction must be proved by the State by a preponderance of evidence in every criminal case (*State v. Payne,* 892 P.2d 1032) personal jurisdiction is not an element of an offense and need not be proved as such. Moreover, the Court of Appeals has not been consistent in requiring the State prove an individual is not an Indian. In an unpublished opinion (*State v. Lucero,* Case No. 860213 - Ca) a different panel of the Appellate Court held: " . . . Appellant had the burden to persuade the trial Court that he was an 'Indian' within the intended purview of 18 U.S.C. Section 1152-53." More importantly, our Supreme Court has indicated: "On these facts, we conclude that *Perank* carried his burden of factually establishing that he has been 'recognized racially' as a Ute Indian." *Perank* at 933. Given the fact that the *Perank* decision is the most recent appellate decision and that it is the opinion of our Supreme Court, this Court is bound to follow that decision. Therefore, although the State bears the

burden of showing that the offense occurred within the boundaries of the State of Utah and Uintah County, the defendant has the burden to show, by a preponderance of evidence, that he is an "Indian" under the *Rogers* test.

Placing the burden on the defendant is consistent with what two Courts have characterized as the majority position of courts which have addressed the issue. *Arizona v. Verdugo,* 901 P.2d 1165, 1168 (1995 Ariz. App. Ct.); *Vermont v. St. Francis,* 563 A.2d 249. This is consistent with case law in: *Arizona (Verdugo): Vermont (St Francis); New Mexico* (*State of New Mexico v. Cutnose,* 532 P.2d 896, (N.M. App. 1974)); Nevada (*State of Nevada v. Jack,* 96 p.497 (1908)); *Pendleton v. Sate* [sic] *of Nevada* 734 P.2d 693 (1987); Oklahoma (*State of Oklahoma v. Klindt,* 782 P.2d 401, (Okla. Crim. App. 1989); Washington (*State of Washington v. Daniels,* 16 P.3d 650) and with sound public policy. " . . . the general rule is that the State has subject matter jurisdiction to prosecute crimes within its territorial border. . . . As an exception to that general rule, however, the Indian Country Crimes Act preempts State Court jurisdiction over a criminal prosecution when an offense involving an Indian occurs on Indian land . . . The federal statute is silent, however, on the issue of who bears the burden of proof to establish these jurisdictional facts." *Verdugo* at 1167. The Arizona Appellate Court then noted that while the State bears the burden to show the offense occurred within State boundaries, the elements of a criminal offense do not require the State to prove that

the crime did not involve an Indian. The Court notes that to require the State to prove that the defendant and the victim were not Indian would place " . . . the state . . . in a position of having to prove the nonoccurence of events which might deprive it of jurisdiction." (*Verdugo* at 1168). The court went on to note: "If we were to place this burden on the state, the state would be compelled to allege . . . every conceivable exception to State Court jurisdiction." (*Verdugo* at 1168). Not only would the state be required to allege every exception to jurisdiction, the state would have the affirmative burden to prove that the exception did not apply.

Wigmore suggest [sic] that in determining who should bear the burden of proof it is appropriate to consider that it is difficult to prove the nonexistence of a fact and it is appropriate to place the burden on the party who presumably has particular means of knowledge.) *Wigmore,* Evidence in Trials at Common Law §2486 (1981). It is therefore relevant that there are over three hundred Indian Tribes which have been recognized by the Federal Government. Membership in any one of these tribes would be sufficient to meet the second test as set forth in *Rogers* (i.e. that the individual has been recognized as an Indian by a tribe, or society of Indians, or by the Federal Government). In addition to Federally recognized tribes there are many more Indian groups or societies of Indians which may form the basis to establish the second test in *Rogers.* It would therefore be virtually impossible for the state to prove that a particular

individual was not a member of any of the possible tribes and Indian societies throughout the United States. Additionally, in many cases it would be impossible to prove that a particular person did not have a significant degree of Indian blood (which is the first test under *Rogers*). While it may be possible to determine the identity of a defendant's parents it may be impossible to prove that the parents do not have Indian blood. In the case of adopted persons, it would often be impossible to determine that the biological parents were not Indian. This becomes even more difficult as you consider whether grandparents and great grandparents (who may be deceased) have Indian blood. All of this is complicated by the liberal interpretation courts have given to the term significant degree of Indian blood. Generally twenty-five percent is considered substantial. It is obvious that, the information which is relevant to a defendant's blood lines as well as his or her associations with Indian Tribes and societies, is uniquely within the knowledge of the Defendant and is usually readily available to the Defendant, while such information is often unavailable to the State.

One must also remember that under 1151 the state is deprived of jurisdiction when a victim is an Indian. If the state bears the burden of proof, the state must show that each victim in every case is not an Indian. In most cases this could be easily accomplished by asking the victim a few simple questions during trial. However, not all victims are available to be examined at trial. Victims move and sometimes

can not be located. Victims may die prior to trial. By definition, a victim in a homicide would never be available to testify concerning their blood lines or association with Indian Tribes and societies. Because Indian status may depend on association with Indian tribes, culture, and society, it would often be difficult to prove that a victim who is not present at trial was not an Indian. Occasionally, it is not possible for the State to even identify the victim by name. (One of the cases cited above (*Jack*) involved a victim of a homicide who was "commonly known by the name 'Lotta', whose real name was to the grand jury unknown." (P 497). If the State were required to prove that it has jurisdiction by disproving Indian status of each victim, there would be certain cases where the victim's status as an [sic] non-Indian could never be proved. By placing the burden on the State, this Court would be depriving the State of jurisdiction merely because the State has no access to the kind of information necessary to prove Indian status under *Rogers*.

Considering all of the circumstances and public policy the burden is properly placed upon the defendant to show an exception to state jurisdiction by establishing a preponderance of the evidence that the defendant or victim has a significant degree of Indian blood and has been recognized as an Indian by an Indian Tribe, or society of Indians, or by the Federal Government.

DATED this 9 day of Sept, 2003.

BY THE COURT:

/S/
A. LYNN PAYNE,
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that on the 9th day of ~~June~~ September, 2003, true and correct copies of the Ruling were mailed, postage prepaid, or hand delivered to: Mr. Edwin T. Peterson, Deputy Uintah County Attorney, at 152 E. 100 N., Vernal, UT 84078 and to Mr. Michael L. Humiston, Attorney for Defendant, at 23 W. Center Street, P.O. Box 486, Heber City, UT 84032.

/S/
Deputy Clerk

EDWIN T. PETERSON (3849)
Deputy Uintah County
Attorney
Attorney for Plaintiff
152 East 100 North
Vernal, Utah 84075
Telephone: (435) 781-5428

IN THE DISTRICT COURT FOR THE
EIGHTH JUDICIAL DISTRICT
IN AND FOR UINTAH COUNTY, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, vs. RICKIE L. REBER, Defendant.	**MODIFIED FINDINGS OF FACT AND CONCLUSIONS OF LAW** (Filed Jan 29, 2004) Case No. 021800320 Judge A. Lynn Payne

The Court, having previously entered written findings on this matter, adopts those findings herein and makes further findings of fact and conclusions of law, based upon the stipulations of the parties as follows:

1. Defendant Rickie L. Reber is charged with "aiding or assisting in the wanton destruction of protected wildlife", a third degree felony, for allegedly assisting his son in taking a trophy buck deer without the appropriate permit from the area

known as the "Book Cliffs" in southern Uintah County. Mr. Reber initially moved to dismiss the criminal charges claiming to be a member of the "Timpanogos Tribe" of Indians and that the area the alleged act occurred was in "Indian Country". Mr. Reber, in the course of the litigation, abandoned his claim to be a member of the "Timpanogos Tribe", affirmatively alleging that he is a member of the "Uintah Band", and is of either Shoshone or Ute decent.

2. Defendant Steven Paul Thunehorst is charged with "aiding or assisting in the wanton destruction of protected wildlife", a class "A" misdemeanor, for allegedly assisting or taking a buck deer without the appropriate permit from the area known as the "White Rocks Canyon" in the National Forest in Northwestern Uintah County. Mr. Thunehorst initially moved to dismiss the criminal charges claiming to be a member of the "Timpanogos Tribe" of Indians and that the area the alleged act occurred in was "Indian Country". Mr. Thunehorst, in the course of the litigation, abandoned his claim to be a member of the "Timpanogos Tribe", affirmatively alleging that he is a member of the "Uintah Band", and is of either Shoshone or Ute decent.

3. Defendant Tex William Atkins is charged with "aiding or assisting in the wanton

destruction of protected wildlife", a class "A" misdemeanor, for allegedly assisting or taking a buck deer without the appropriate permit from the area known as the "White Rocks Canyon" in the National Forest in Northwestern Uintah county. Mr. Atkins initially moved to dismiss the criminal charges claiming to be a member of the "Timpanogos Tribe" of Indians and that the area the alleged act occurred in was "Indian Country". Mr. Atkins, in the course of the litigation, abandoned his claim to be a member of the "Timpanogos Tribe", affirmatively alleging that he is a member of the "Uintah Band", and is of either Shoshone or Ute decent.

4. With respect to Mr. Reber, it was stipulated by the parties that he claimed to be 1/16th Indian by blood, from his mother. With respect to Mr. Thunhorst [sic] and Mr. Atkins it was stipulated by the parties that they claim to be 1/16th Indian by blood, from their grandmother. Mr. Reber's mother, and the grandmother of Mr. Thunhorst [sic] and Mr. Atkins, were listed on the termination proclamation. Their status as Indians was therefore terminated by the Ute Partition act of 1954, 25 U.S.C. sec. 677 et seq. (Hereinafter the "UPA"). Mr. Thunhorst [sic] and Mr. Atkins may have a grandparent who had Indian blood but was not a member of a tribe which was recognized by the United States Dept. of Interior,

Bureau of Indian Affairs as an Indian entity, and eligible to receive services from the Bureau of Indian affairs by virtue of their status as Indian tribe. Mr. Thunehorst and Mr. Atkins have not produced evidence of the heritage of this person.

5. Mr. Reber, Mr. Thunhorst [sic] and Mr. Atkins are not members of any Indian tribe recognized by the United States Dept. of Interior, Bureau of Indian Affairs as an Indian entity, and eligible to receive services from the Bureau of Indian affairs by virtue of their status as Indian tribe.

6. Mr. Reber is 51 years old, or was at the time of this Courts last ruling.

7. Mr. Reber was born in Roosevelt Utah and lived in Lapoint Utah until he was 22.

8. Mr. Reber has not lived on or near the Ute Indian Reservation since he was 22.

9. Mr. Reber does not now claim to be a member of the Timpanogos tribe.

10. Mr. Reber, Mr. Thunehorst, and Mr. Atkins do not now maintain that the permit that they produced when they were contacted by law enforcement was valid, but do maintain that they believed the permit was valid at the time of the alleged violations.

11. Mr. Reber, Mr. Thunehorst, and Mr. Atkins claim to be members of the "Uintah Band" and that is the only group that they claim to be associated with. They all maintain that they are Indians of Utah Territory. They do not claim to be members of the Ute Indian tribe, or of the Uintah band of the Ute Indian Tribe which is one of the three constituent bands which comprise the Ute Indian Tribe.

12. Mr. Reber was alive in 1961. Mr. Thunhorst [sic] and Mr. Atkins were born after 1961, however Mr. Thunhorst's [sic] and Mr. Atkin's [sic] mothers, who were sisters, were alive at the time of the termination proclamation in 1961.

The Court makes the following conclusions of law.

With respect to Mr. Reber, Mr. Thunhorst [sic] and Mr. Atkins, even if the court were to not consider the issue of the UPA, 25 U.S.C. §§ 677 *et seq.*, they do not have significant blood quantum under the first prong of the two part analysis stated in *United States v. Rogers,* 45 U.S. (4 How.) 567, 572-73 (1846), which was adopted by the Utah Supreme Court in *State v. Perank,* 858 P.2d 927, 931 (Utah 1992) to be considered an Indian. The Court can find no benefit which is available base [sic] upon Indian blood quantum of 1/16th. Therefore for the purpose of qualifying for Federal programs or recognition they do not qualify based on their quantum of blood. When describing a person as having 1/16 Indian Blood one must realize that necessarily means that same person is 15/16 non

Indian. That means that he has 6¼% Indian blood and 93 3/4 non Indian blood. This percentage of blood is simply not high enough to meet the first prong of the *Rogers* Test. The Court has found no Federal or State case which determined a percentage of Indian blood as low as 6.25% to be significant under the *Rogers* Test. There is judicial precedence, *Vialpando vs. Wyoming*. 640 P.2d 77, that 12½% was not substantial under the Rogers Test. Other case [sic] have held that 12½% is substantial. This Court is unaware of any case which has gone below 12½%. The case that held 12½% was substantial is *Sully vs. United States* 195 Fed. 2d. 113 which was issued by the 8th Circuit and is an old case.

Even if Mr. Reber, Mr. Thunhorst [sic] and Mr. Atkin's blood quantum was of a significant amount, the Court finds that the UPA terminated their status as an Indian for the purpose of criminal jurisdiction. Congress has the plenary power to legislate for Indian tribes in all matters. An individuals status as Indian for jurisdictional purposes is subject to the power of Congress to allocate jurisdiction between the State, Tribes, and the Federal Government. Congress clearly has the unilateral power to grant the State jurisdictions over persons who are Indian. The statute in this case (Ute Partition Act, 25 U.S.C. §§ 677 *et seq.*) says that upon termination, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision was terminated and the laws of the several States shall apply to such

member in the same manner as they apply to other citizens within their jurisdiction. That provision clearly grants to the State jurisdiction over all persons who are listed in the termination proclamation which would include Mr. Reber's Mother and Mr. Thunhorst [sic] and Mr. Atkins grandmother. Therefore, for the purpose of determining jurisdiction, Mr. Reber's Mother and Mr. Thunhorst [sic] and Mr. Atkins grandmother are no longer considered to be Indian. The natural consequence of termination of these ancestors as Indian is that each of the Defendant's [sic] would not be considered to have received any Indian blood from, in Mr. Reber's case, his mother and in Mr. Atkins and Mr. Thunhorst [sic] case, their grandmother.

The Court does not believe that Congress intended to terminate an ancestors status as Indian only to continue that relationship with their decedents.

For the purpose of determining jurisdiction under *Rogers* Mr. Reber, does not have any Indian blood coming through his mother and since this is the only Indian blood which he claims, he does not have any Indian blood for the purposes of the *Rogers* analysis. As for Mr. Thunhorst [sic] and Mr. Atkins they also have no Indian blood coming from their maternal grandmother. The conclusion of this Court is based upon the conclusions of the Federal Court in the *Felter* case, *U.S. v. Orrana B. Felter,* 546 F.Supp. 1002 (D.C. 1982), *aff'd* 752 F.2d 1505 (10th Cir 1985) and the Utah Appellate Court in the *Gardner* case *State v. Gardner,* 827 P.2d 980 (Utah App. 1992).

Mr. Reber, Mr. Thunhorst [sic] and Mr. Atkins argue that in spite of the termination of their ancestors Indian status, they have not been affected by the UPA; because in Mr. Rebers case he, and in Mr. Thunhorst [sic] and Mr. Atkins' case their mother was alive at the time of the UPA. The absence of the [sic] Mr. Thunhorst [sic] and Mr. Atkins' mother's name, or in Mr. Rebers case his name on the termination proclamation is not relevant to this inquiry. It only reflects that at the time of the termination act, Mr. Reber and the mothers of Mr. Thunhorst [sic] and Mr. Atkins, were not enrolled members of the Ute Tribe, and therefore could not be an individual who could receive tribal benefits. Because these individuals were not tribal members they could not have been listed on the termination proclamation. Nevertheless, their immediate ancestors were members of the tribe whose Indian Status was terminated.

It is clear to the Court that by 1950 all relevant Indian hunting and fishing rights were vested in the Ute Indian tribe. No individual had a right to those hunting and fishing rights except through the tribe, and through membership in the tribe. Again it is evident to the Court that Congress did not intend to terminate Mr. Reber's mothers status as and [sic] Indian and Mr. Thunhorst [sic] and Mr. Atkins grandmother's status as an Indian, only to recognize their children and grandchildren to have Indian hunting rights based upon Indian heritage which was Congressionally terminated. The argument that they were not among the 490 individuals listed in the UPA

is therefore without merit. One is either a member or not. Whether or not they were eligible to be an individual who was entitled to membership is not the issue. Before this Court can take note of any privilege which is based upon tribal membership, that person must apply for and be granted membership by the tribe. There is no evidence in this case that Mr. Reber Mr. Thunhorst [sic] or Mr. Atkins have ever applied for or been granted membership by the Ute Indian Tribe. And there is no indication that Mr. Thunhorst [sic], Mr. Reber or Mr. Atkins has been granted any other tribal membership.

It would be inappropriate for the Court to extend any privilege which is available only through membership when the tribe has never granted those privileges through membership. Even if a Defendant may have once been eligible for membership that would not be relevant. You either are a tribal member or you're not. If you are eligible you need to apply and be granted those privileges. The Court was further convinced after reading Judge Jenkins opinion in *Felter* which was the basis for the *Murdock* decision, *U.S. v. Murdock,* 123 F.3d 534 (10th Cir. 1997), that there is a connection. The Court finds that all of those rights are vested in the Tribe. A members interest in that tribal property is personal and cannot be transferred or inherited. It is true that those 490 persons who were terminated under the UPA continue to have hunting and fishing rights it is not true that their heirs would continue to claim any interest in tribal

property in their own right if they were not given the privileges of tribal membership. The rights of the terminated Utes to hunt and fish was not their personal property right and would be extinguished with their death and is not transferrable or inheritable. The children of persons listed on the Termination Proclamation are not entitled through their parents to enjoy hunting and fishing privileges. There was a foot note [sic] I think from the *Murdock* case, citing Judge Jenkins opinion in the *Felter* case, and I'm going to paraphrase that. In essence he said, those who are terminated Utes are readily identified and that their rights can be ascertained and that attrition would eventually extinguish the rights that they have because those rights are not inheritable or transferable and ultimately those rights would end.

The Court finds that Mr. Reber does not have, independent of the Termination Act, sufficient blood quantum to qualify for an Indian under the *Rogers* Test. I believe for purposes considering the Termination Act considering the *Rogers* Test he has no Indian blood. Mr. Reber does not and can not have any hunting or fishing rights that come through his mother, because they have been terminated and they are not transferrable [sic] even though he was alive at the time of the Termination Act. Mr. Reber rights must be connected to the tribe who were the ones who had the hunting and fishing rights. With respect to Mr. Thunhorst [sic] and Mr. Atkins the Court will not consider, for purpose of analysis, the Indian blood coming through their Maternal Grandmother. The

same analysis will apply with respect to whether or not they receive any hunting or fishing rights from their Maternal Grandmother. Because the Court has found that no Defendant has sufficient blood quantum to satisfy the first prong of the *Rodgers* [sic] decision the Court need not inquire as to the second.

All Motions with respect to claims that the Court does not have jurisdiction which are based upon claims that the defendants are Indians are denied. The Court has jurisdiction to hear the criminal cases which have been filed.

Dated this 27 day of January 2004.

BY THE COURT:

/S/

A. Lynn Payne
Eighth District Court Judge

CERTIFICATE OF DELIVERY

I do hereby certify that I delivered by US Mail, postage prepaid, a true and correct copy of the foregoing MODIFIED FINDINGS OF FACT AND CONCLUSIONS OF LAW to Michael L. Humiston Attorney for Defendant, 23 West Center Street P.O. Box 486 Heber City, Utah 84032, on this 22nd day of January, 2004.

/S/

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No. 07-103

FILED
OCT 1 - 2007
OFFICE OF THE CLERK
SUPREME COURT U.S.

In The

Supreme Court of the United States

RICKIE L. REBER, TEX WILLIAM ATKINS, STEVEN PAUL THUNEHORST, and C.R.,

Petitioners,

v.

THE STATE OF UTAH,

Respondent.

On Petition For Writ Of Certiorari To The Utah Supreme Court

REPLY BRIEF FOR PETITIONERS

MICHAEL L. HUMISTON
Counsel for Petitioners
23 West Center Street
P.O. Box 486
Heber City, UT 84032
(435) 654-1152

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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REPLY BRIEF FOR PETITIONERS

A. All issues set forth in the Petition were properly raised and preserved in the courts below.

As has already been pointed out, all of the issues raised in the Petition were properly, carefully, and timely raised in the courts below. Pet. 8-10; Pet. App. 31-37, 38-39; Resp. App. 1-10. Petitioners likewise briefed these matters exhaustively before the Utah Court of Appeals. Appellants' Briefs, Jan. 5, 2005.

In an apparent effort to foreclose review by this Court, the State refused to respond to some of the issues raised before the Utah Court of Appeals. Petitioners duly pointed out this omission to that court. Appellants' Reply Brief, July 29, 2005, pp. 25-27. The court ultimately ruled in the Petitioners' favor, albeit on grounds not fully briefed by either party. Pet. 11, Pet. App. 17. Petitioners thus cross-petitioned to the Utah Supreme Court as to the effect of the Ute Partition Act on the Uintah Band. Cross-Petitions, May 30, 2006.

"[A] prevailing party may urge any ground in support of the judgment, whether or not that ground was relied upon or even considered by the court below." *United States v. Arthur Young & Co.*, 465 U.S. 805, 814 (1984), *accord Dipoma v. McPhie*, 29 P.3d 1225, 1230 (Utah 2001). Inasmuch as the present Petitioners prevailed before the Utah Court of Appeals, it was unnecessary, and indeed, would have been inappropriate to cross-petition on any issue

other than the new one raised by the Utah Court of Appeals in its ruling. *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940). It is equally clear that a prevailing party must cross-appeal to contest an otherwise favorable ruling. *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 85, n.9 (1980).

Petitioners fully briefed all five issues before the Utah Supreme Court. As the prevailing party in the lower appellate court, the present Petitioners could and did assert before the Utah Supreme Court all issues raised before the Utah Court of Appeals. Opening Brief, Oct. 13, 2006, pp. 17-25. Again, the State of Utah refused to respond to any issue other than that upon which it had prevailed in the Utah Court of Appeals. For all intents and purposes, it left it up to the amicus curiae to even respond to the Petitioners' Cross-Petition.

The State of Utah would now urge that this Court may only review those issues which the immediately preceding court chose to explicitly mention. Resp. 8-15. That is clearly not the law. This Court has long held that a petitioner must only show that the issue was fairly *presented* to the court below. *Webb v. Webb*, 451 U.S. 493 (1981). Where, as here, the lower court ruling does not address the issues addressed in the petition, the burden is upon the petitioner to show merely that the issue was properly *raised* in the court below. *Street v. New York*, 394 U.S. 576, 582 (1969). Petitioners have clearly met this burden. The issue is sufficiently preserved if the necessary effect

of the lowe ..urt's ruling is to deny the petitioner's claim. *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928).

In effect, the State of Utah suggests a rule whereby any adverse party or lower court could foreclose review by simply choosing to ignore issues it does not want addressed. However, this Court has held that lower court rulings cannot prevent this Court from reviewing all federal issues properly raised. *Hathorn v. Lovorn*, 457 U.S. 255, 261-262 (1982); *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969).

The issue of judicial bias was properly raised in the trial court as a denial of due process under the Fourteenth Amendment. *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 821-822 (1986). The Petitioners have consistently maintained that this constituted plain error. *United States v. Cotton*, 535 U.S. 625, 631-632 (2002).

B. The State's interpretation of *Ute V* and *Conway* is irrelevant to the issue of Reasonable Reliance.

As set forth in the Petition, a person cannot be convicted of a crime if they acted in reasonable reliance upon a published court ruling. *United States v. Caceres*, 440 U.S. 741, 753 n.15 (1979). The issue is whether that reliance was *reasonable*, not whether it was correct. Pet. 13. The Respondent and amicus now respond by characterizing the Tenth Circuit's *Conway* holding as merely procedural. Resp. 9. Am.Br. 6, n.3. As correctly stated in Respondent's brief, *Timpanogos*

Tribe v. Conway, 286 F.3d 1195 (10th Cir. 2002), was an interlocutory appeal by the State of Utah against a ruling in favor of some members of the Uintah Band. Resp. 9. In determining that the district court did have jurisdiction, the appellate court necessarily stated the basis for its decision, and it was this basis that the Petitioners relied upon in determining they could continue to hunt on their own tribal land. This is how appellate rulings are supposed to work. To now characterize this ruling as "merely procedural" would be the same as insisting that *Marbury v. Madison*, 1 Cranch 137 (1803), determined nothing more than whether Mr. Marbury was entitled to a writ.

Respondents again concede, as they have before the Utah Court of Appeals and the Utah Supreme Court, that the Petitioners were in fact in Indian country as defined under *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997) (*Ute V*). Resp. 9-10. No one disputes that Ute Indians can hunt throughout Indian country. Am.Br.App. 78-94. The sole jurisdictional question thus remaining before this Court is whether Uintah Indians can still hunt in that Indian country as well.

C. The Ute Tribe does not contest that the Ute Partition Act terminated over two thirds of the Uintah Band.

Apparently the Ute Tribe does not contest that the majority of the Uintah Band was terminated under the Ute Partition Act ("UPA"), 25 U.S.C. §§677-677aa, but merely whether that termination

effectively expelled the Uintah Band from the Ute Tribe. Am.Br. 9. Since the sole factual issue of consequence is whether a majority was terminated, the Ute Tribe has apparently conceded that fact. *See* Sup.Ct.R. 15.2.

Moreover, this Court has consistently limited termination to federal benefits enumerated in the termination acts, leaving tribal existence unaffected. *Menominee Tribe v. United States*, 391 U.S. 404, 412-413 (1968). Applying this rule, the Tenth Circuit held that termination could not be imputed to hunting rights not explicitly mentioned in the UPA. *United States v. Felter*, 752 F.2d 1505, 1511 (10th Cir. 1985). The Ute Tribe has now conceded (and quite forcefully at that), that the UPA makes no mention of the Uintah Band whatsoever. Am.Br. 7-10. The factual basis is thus firmly established for this Court to consider how the majority of Uintah Band members could be stripped of their Uintah tribal existence when their tribe is never even mentioned in the Act.

The amicus implies that because neither Mr. Reber nor Mrs. Thunehorst were listed on any roll prior to 1954, they could not possibly be Utes. Am.Br. 13. The Ute Tribe has pointedly failed to mention that no roll of the entire Ute Tribe existed prior to termination. The only difference between the 456 Uintahs on the termination roll and the 220 excluded from both rolls is the roll itself. In other words, not only were Mr. Reber and Mrs. Thunehorst never members of the Ute Tribe, neither were the 456 Uintahs on the list, or for that matter, the other 34 Indians. Indeed, taking the Ute Tribe's allegation to its logical conclusion, no Ute

Tribe existed at all until the full-blood roll was compiled under the UPA. If the 490 were never Indians in the first place, there certainly would have been no need to terminate them.

Finally, the Ute Tribe somehow implies that there is no "friction" regarding the Uintah Band because an agreement exists between the Ute Tribe and the State. Am.Br. 3. It is hard to see how 50 years of litigation, including a 24-year boundary dispute between the Ute Tribe and the State of Utah, demonstrates such a harmony. Pet. 7, n.2. Quite simply, the Tenth Circuit's observation in *Hackford v. Babbitt*, 14 F.3d 1457, 1463 (10th Cir. 1994), Pet. 6, speaks for itself. Any State/tribal harmony that comes at the expense of a dispossessed tribe is the "harmony" of the cat digesting the canary.

D. Neither *Hackford* nor *Murdock* address the effect of the Ute Partition Act on the Uintah Band.

The amicus cites *Hackford* and *United States v. Von Murdock*, 132 F.3d 534 (10th Cir. 1997), for the proposition that the Uintah Band has no existence independent of the Ute Tribe. Am.Br. 5-7. However, neither *Hackford* nor *Murdock* ever addressed the effect of the UPA on the Uintah Band.

In *Hackford*, the Tenth Circuit reviewed the 1937 Ute constitution and a set of agreements ratified in 1950 (*ref.* 25 U.S.C. §672), and concluded that, *as of 1950*, the three bands constituted a unified tribe. 14

F.3d at 1461. The case makes *no further* findings in regard to the Uintah Band. Indeed, it explicitly *refrains* from addressing Mr. Hackford's separate claims with regard to the Uintah Band at all, finding that all water on the reservation has a priority date of October 3, 1861, regardless of band affiliation. 14 F.3d at 1469.

Having addressed the Uintah Band only through 1950, the court then addressed the relative effects of the 1954 UPA on the "Mixed-bloods" and "Full-bloods," drawing no connection whatsoever between the "Mixed-bloods" and the Uintah Band. 14 F.3d at 1461-1464. Nowhere does the opinion remotely suggest that the Tenth Circuit was even apprized of such a connection. Indeed, the court's extensive treatment of Mr. Hackford's rights as a "Mixed-blood," while never making a finding on his rights as a Uintah, confirms not only that the court was not aware of any such connection, but that Mr. Hackford never presented the court with such a question.

Perry Murdock was born in 1968 to two parents who were included on the termination rolls. His first argument was simply that he is a member of the Ute Tribe, notwithstanding the UPA, and *with no reference to the Uintah Band whatsoever*. The Tenth Circuit rejected this argument out of hand. *Murdock*, 132 F.3d at 540. He then argued that he had rights as a member of the Uintah Band, *without reference to the UPA*. *Id.* The Tenth Circuit accordingly dispensed of his argument, likewise *without reference to the UPA*. 132 P.3d at 541. The court was never asked to

address the effects of the UPA on the Uintah Band, and thus provided no analysis relevant to that question. Like the *Hackford* court, the *Murdock* court simply considered the Ute Tribe as of 1950, four years prior to the UPA, and made no further inquiry. To this day, the Tenth Circuit has yet to be informed that the UPA terminated three quarters of the Uintah Band. This pivotal issue has yet to be addressed by any federal court.

E. No Act or Treaty empowers the Ute Tribe to determine the membership of the Uintah Band.

The Ute Tribe argues on the premise that members of the Uintah Band are merely former Utes, excluded from the Ute Tribe under the authority of *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72, n.32 (1978). This conflicts with three critical principles: First, the Uintah Band possesses as much right under *Santa Clara* to determine who is Uintah as does the Ute Tribe to determine who is Ute. Second, the Ute Tribe can point to nothing in the Ute Constitution of 1937 nor any treaty or act of Congress giving it a separate such power over the Uintah Band. The Ute Tribe has power solely to determine the membership of the Ute Tribe as a whole, *not* of the constituent bands. Indeed, the Ute Tribe never even presumed to exercise such a power until after 1954, *after* the expulsion of the Uintah Band. Prior to that time, each band maintained its own roll.

Finally, the Tenth Circuit has clearly held that any ambiguity in the UPA must be interpreted in favor of those terminated, *not* the Ute Tribe. *Felter*, 752 F.2d at 1511, *applying Bryan v. Itasca County*, 426 U.S. 373 (1976). In short, when the Uintah Band was expelled under the UPA, it took its rights under *Santa Clara* with it. After 1954, the Uintah Band was no longer a party to the Ute Constitution and could no longer be bound by it. The Ute Tribe thus does not, nor can it, explain how a membership ordinance passed in 1992 could have any relevance to the Uintah Band. Am.Br.App. 42.

F. The State's application of *Rogers* is contrary to this Court's holdings regarding terminated tribes.

The Utah Supreme Court's interpretation of *United States v. Rogers*, 45 U.S. (4 How.) 567 (1845), directly contradicts this Court's more recent and applicable holdings in *Santa Clara* and *Menominee*. Moreover, *Rogers* merely held that a white man with no Indian ancestry whatsoever who was adopted into an Indian tribe at a mature age could not now claim Indian status. It indicates how far the law has been misconstrued that the State of Utah now relies on *Rogers* to declare that a man who is Indian by birth, who was eligible at birth for membership in the Ute

Tribe, and who is recognized as Indian by his own tribe[1], is nevertheless not an Indian.

The blood quantum charade becomes apparent when it is recognized that under the UPA, all persons with a blood quantum *up to and including 50%* were nevertheless terminated from federal supervision. 25 U.S.C. §677a(b) and (c). To maintain this charade, the Ute Tribe maintains the highest blood quantum of any tribe in America: *5/8*! Am.Br.App. 33. This means that the terminated Uintah Band possesses a *higher* Indian blood quantum than many entire *tribes subsequently* added to the Secretary of the Interior's list of "recognized" tribes.

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[1] The State of Utah's obsession with blood quantum, as well as the Ute Tribe's attempts to invoke its constitution against a rival tribe, both overlook that tribal "regulation is rooted in the unique status of Indians as '*a separate people*' with their *own* political institutions. Federal regulation of Indian tribes, therefore, is governance of once-sovereign political communities; it is *not* to be viewed as legislation of a 'racial group consisting of Indians. . . . '" *United States v. Antelope*, 430 U.S. 641, 646 (1977), *citing Morton v. Mancari*, 417 U.S. 535, 553, n.24 (1974). (Emphasis added). Cohen, Felix S., *Handbook of Federal Indian Law* (1982 ed.), p. 654. This separateness of people and institutions would include separation of tribes from each other, as well as from the State and federal governments.

G. The Petition raises important federal questions of Due Process and Indian tribal identity.

The Utah Supreme Court's holding directly contradicts this Court's holdings as to Due Process of Law under the Fourteenth Amendment, both as to reliance upon published court rulings and as to judicial bias. *Caceres*, *supra*, *Aetna Life Ins. Co.*, *supra*. Its implicit holding regarding the Uintah Band directly opposes (1) this Court's holding regarding the rights of terminated tribes, *Menominee*, *supra*, (2) the canons of construction regarding acts affecting Indian rights, *Bryan*, *supra*, (3) the specific application of those canons to the UPA, as set forth by the Tenth Circuit, *Felter, supra*, and (4) the presumption of majority rule, as is found throughout the entire federal regulatory structure. *See, e.g.*, 25 U.S.C. §§476(a)(1), 476(c), 1300j-4(a)(1), 1300k-6(a)(1), 1321(a), 1322(a), 1326.

The process of separating tribal populations from their legal identities began on the Uintah & Ouray Reservation. The process is now raging through American Indian tribes like a plague. The controversies over the Cherokee Freedmen, now pending before Congress, and the Pachenga Tribe of California, in the face of new casino money, are but two examples. *See* House Bill 2824, June 21, 2007, and Amend. 783 to House Bill 2786, Sept. 6, 2007 (Respectively severing relations with U.S. government and prohibiting distribution of funds until Cherokee Nation of Oklahoma recognizes Cherokee Freedmen under Treaty of 1866). *See also Lamere v. Superior Court*, 131

Cal.App.4th 1059, 31 Cal.Rptr.3d 880 (Cal. App. 4th Dist. 2005), *cert. denied*, 547 U.S. ___ (May 22, 2006).

The potential for exploitation of such a process is profound. The only check that lies within the power of the federal government is to ensure that democratic majorities retain control of tribal identities. While the legislative and administrative structure latently implies a presumption of majority rule, it is high time that the principle be explicitly articulated, before America's entire Indian population is dispossessed by minority cliques seeking nothing but profit.

Absent explicit language to the contrary, how is it possible to terminate the majority of a tribe and not terminate the tribe itself? The answer lies in applying the accepted canons of construction and the basic laws of physics. Three quarters of the membership is three quarters of the membership, whether by choice or by force.

CONCLUSION

The State of Utah has presented no plausible reason why the Petitioners should not have been able to present their reasonable reliance argument to a jury. Likewise, the Ute Tribe has provided no plausible explanation as to how three quarters of a tribe can be terminated without terminating the tribe itself. Since the Utah Supreme Court's ruling stands contrary to this Court's precedents on both these

issues, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

MICHAEL L. HUMISTON
Counsel for Petitioners
23 West Center Street
P.O. Box 486
Heber City, UT 84032
(435) 654-1152

No. 07-103

In The
Supreme Court of the United States

RICKIE L. REBER, TEX WILLIAM ATKINS, STEVEN PAUL THUNEHORST, AND C.R.,

Petitioners,

v.

STATE OF UTAH,

Respondent.

On Petition For A Writ Of Certiorari To The Utah Supreme Court

BRIEF OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENT STATE OF UTAH AND IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

CHARLES L. KAISER
Counsel of Record

CHARLES A. BREER
PETER J. HACK

DAVIS GRAHAM & STUBBS LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202
Telephone: (303) 892-9400

Counsel for Amicus Ute Indian Tribe of the Uintah and Ouray Reservation

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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The Ute Indian Tribe of the Uintah and Ouray Reservation ("Ute Tribe") respectfully submits its brief in opposition to the Petition for Writ of Certiorari.

UTE CONSTITUTION, STATUTES, ORDINANCES, AND OTHER AUTHORITY

The following authorities are set forth verbatim in Appendix A:

Ute Tribe Constitution
Ute Tribe Ordinance 92-05
Ute Partition Act, 25 U.S.C. §§ 677-677aa
Cooperative Agreement between the Ute Tribe and State of Utah

STATEMENT OF INTEREST OF AMICUS CURIAE[1]

The Ute Tribe, as recognized by the Department of the Interior ("Interior"), exercises all Tribal sovereign authority over hunting and fishing and other activities within the Uintah and Ouray Reservation ("Reservation"). The Ute Tribe has a substantial interest in the Petition for Writ of Certiorari because

[1] Letters from all parties consenting to the filing of this brief have been filed with the Clerk of Court. Counsel for the Ute Tribe authored this amicus brief in its entirety. No person or entity other than the Ute Tribe contributed monetarily to the preparation of this brief. Sup. Ct. R. 37.6.

Petitioners seek to divest the Ute Tribe of the sovereign authority it has exercised over hunting and fishing on the Reservation for over 70 years. The Ute Tribe's opposition to the Petition is consistent with and supports that of Respondent State of Utah.

SUMMARY OF REASONS FOR DENYING THE PETITION

In petitioning for certiorari Petitioners present no conflict among the courts nor any other of the compelling reasons typically necessary to obtain certiorari. Sup. Ct. R. 10. Petitioners instead assert hunting and fishing rights which are contrary to settled law. Petitioners claim that the Uintah Band, not the Ute Tribe, possesses sovereign authority over hunting and fishing within the Reservation. Petition ("Pet.") at 4, 15. Petitioners have claimed to be affiliated with several different bands and tribes even in the course of this litigation, *infra* at 11-12, but currently claim to possess hunting and fishing rights on the Reservation as members of the Uintah Band, Pet. at 4-5, 15. The courts and Interior have uniformly rejected Petitioners' claim that the Uintah Band holds independent hunting and fishing rights. Those authorities hold that (i) the Uintah Band long ago "ceased to exist separately outside the Ute Tribe" and (ii) any argument that the "Uintah Band's hunting and fishing rights retain a separate existence and belong only to the Uintah Band is groundless." *See, e.g., United States v. Von Murdock*, 132 F.3d 534, 541

(10th Cir. 1997); *Hackford v. Acting Phoenix Area Director*, 33 IBIA 144, 1999 WL 485041 (1999). The Utah Supreme Court's decision is in accord with the decisions of the federal courts and agencies. *State v. Reber*, 2007 WL 1189637 (Utah 2007).

Petitioners seek certiorari in the face of that authority by claiming that (i) courts holding the Uintah Band is not a separate entity do not address Petitioners' claim that the Ute Partition Act of 1954 ("UPA"), 25 U.S.C. §§ 677-677aa, expelled the Uintah Band from the Ute Tribe, (ii) courts have not determined the effect of the UPA on those born prior to the UPA and not listed on the UPA rolls, and (iii) there is an "urgent" "need for a clear interpretation of the UPA" because of "the potential for friction between the Uintah Band, the Ute Tribe, and the State of Utah." Pet. at 12. Certiorari should be denied. *First*, the language of the UPA, now more than 50 years old, and the substantial body of case law interpreting it, show that the UPA did not expel the Uintah Band. The Uintah Band remains part of the Ute Tribe. *Second*, Petitioners were born before the UPA was enacted and were properly not included on the UPA rolls because Petitioners were never members of the Uintah Band or the Ute Tribe.[2] *Third*, there is no "friction" to be resolved by the Court. The Ute Tribe and the State of Utah have a longstanding, successful

[2] Petitioners did not properly present this issue to the Utah Supreme Court; the Court did not rule on the issue; and Petitioners cannot now raise the issue on appeal. *See infra* at 12.

cooperative agreement governing their respective enforcement authority over hunting and fishing on Reservation lands and both sovereigns have jointly opposed Petitioners' claims.

REASONS FOR DENYING THE PETITION

I. PURSUANT TO WELL ESTABLISHED PRECEDENT, THE UINTAH BAND MAINTAINS NO EXISTENCE OUTSIDE OF THE UTE TRIBE.

A. The Uintah Band Merged Into The Ute Tribe.

In 1937 the "Ute Indians of the Uintah, Uncompahgre and Whiteriver Bands" adopted a tribal constitution and formed the Ute Tribe as authorized by the Indian Reorganization Act, 25 U.S.C. § 476. *See* Appendix 1-30 ("App."), Ute Tribe Constitution, at Preamble. The three bands collectively ratified the Ute Constitution by a vote of 347-12 and Secretary of the Interior Harold L. Ickes approved the Ute Constitution on January 12, 1937. App. 28-30. The Ute Constitution merged together the three bands.

> We, the Ute Indians of the Uintah, Uncompahgre and Whiteriver Bands hereafter to be known as the Ute Indian Tribe of the Uintah and Ouray Reservation, . . . do ordain and establish this Constitution of the Ute Indian Tribe of the Uintah and Ouray Reservation.

App. 1. The Ute Constitution assigns any rights held by the constituent bands, including the Uintah, to the Tribe as a whole. App. 11, Art. VI, § 4 ("Any rights and powers heretofore vested in the Tribe or bands of the Uintah and Ouray Reservation but not expressly referred to in this Constitution . . . may be exercised by the people of the Uintah and Ouray Reservation through the adoption of appropriate By-laws and constitutional amendments."). Under the Ute Constitution, the territory, rights, and jurisdiction of the three bands that joined to form the Ute Tribe are vested in the Ute Tribe and the individual bands retain no rights and powers outside the Ute Tribe. *Id.* at § 4.

B. The Uintah Band Has No Hunting And Fishing Rights Independent Of The Ute Tribe.

The Tenth Circuit Court of Appeals in *United States v. Von Murdock*, 132 F.3d 534 (10th Cir. 1997), rejected the same claims made here by Petitioners. In *Von Murdock*, children of individuals listed on the mixed-blood roll claimed to be affiliated with the Uintah Band and argued that they could hunt and fish on the Reservation. *Von Murdock*, 132 F.3d at 536, 539; Pet. at 3, 7, 9; Pet. App. 10. There, as here, they asserted that the Uintah Band possessed rights separate from the Ute Tribe. 132 F.3d at 539; Pet. at 4-5, 15. The Tenth Circuit rejected those claims as "groundless" and "untenable," *id.* at 541, because "the constitution [] makes clear":

1. "that the Bands ceased to exist separately outside the Ute Tribe,"

2. "that jurisdiction over what was formerly the territory of the Uintah Band was to be exercised by the Ute Tribe," and

3. "that the rights formerly vested in the Uintah Band were to be defined by the Ute Constitution and exercised by the Ute Tribe."

Id. Other federal courts have reached the same conclusion. *See Timpanogos Tribe v. Conway*, Civ. No. 00-734 at 10-19 (D. Utah 2005), *appeal dismissed*, Docket No. 05-4059 (10th Cir. 2005) (determining that Timpanogos Indians merged into the Uintah Band, concluding that the Uintah Band became part of the Ute Tribe, and rejecting the claim that those alleging to be Timpanogos members – a group that included three of the Petitioners – possess hunting and fishing rights independent of the Ute Tribe);[3] *Hackford v. Babbitt*, 14 F.3d 1457, 1461 (10th Cir.

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[3] *Timpanogos Tribe v. Conway*, 286 F.3d 1195 (10th Cir. 2002), does not hold that members of the Uintah Band "made out a prima facie case that they possessed the right to hunt and fish on the Reservation." Pet. at 6-7. *Conway*, a decision on interlocutory appeal, addressed only "issues of Eleventh Amendment immunity and subject matter jurisdiction." 286 F.3d at 1199. As is clear from the District Court's 2005 decision, the claims of the Timpanogos Tribe did not survive summary judgment. *Timpanogos Tribe v. Conway*, Civ. No. 00-734 at 2, 18 (holding that plaintiffs failed to support their claim to hunting and fishing rights on the Reservation.).

1994) (describing the evolution of events "from loosely-knit bands to unified Ute Tribe"). Interior's case law is in accord, *Hackford*, 33 IBIA at 146 ("the rights originally vested in the Uintah Band [were] transferred to the Ute Indian Tribe"), as is the Utah Supreme Court's, *Reber*, at *4-5 ("the Uintah [Band] no longer has a separate existence apart from the Ute Tribe").

C. The Ute Partition Act Did Not Expel The Uintah Band.

Petitioners claim the UPA expelled the Uintah Band from the Ute Tribe. Pet. at 5, 15. The UPA did not expel the Uintah Band. Cases holding that the Uintah Band has no separate existence from the Ute Tribe discussed the UPA at length, but did not find that the UPA expelled the Uintah Band. *Von Murdock*, 132 F.3d at 535-40, 541-43. Nor does Petitioners' expulsion claim square with the language or intent of the UPA.

Congress enacted the UPA in 1954 at the insistence of tribal members to "provide for the partition and distribution of the assets of the Ute Indian Tribe . . . and for the termination of Federal supervision over . . . the mixed-blood members of said tribe." 25 U.S.C. § 677; *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 143 (1972) ("[The UPA] was the result of proposals initiated by the tribe itself."). The UPA first divided the Ute Tribe into two groups of individuals: "Full-blood" Indians, defined as

"a member of the tribe who possesses" a certain quantum of "Ute Indian blood and [] total Indian blood," 25 U.S.C. § 677a(b), and "Mixed-blood" Indians, defined as "a member of the tribe" with a lesser quantum of Ute Indian and total Indian blood *and* those full-blood individuals who choose to be classified as "mixed-bloods," *id.* at 677a(c). Inclusion on the mixed-blood roll was not dependent upon band affiliation, §§ 677a, 677b, 677c, and 677g (defining "mixed-blood" and setting out the procedure for inclusion on the mixed-blood roll), and the courts have so held, *Hackford*, 14 F.3d at 1462 ("the roll makes no reference to band affiliation"). After the distribution of tribal assets, the Indian status of each individual on the mixed-blood list was terminated. 25 U.S.C. § 677v ("declaring that the Federal trust relationship to such individual [each individual on the mixed-blood list] is terminated"). To the extent that the mixed-blood individuals were required to act as a group after termination, they were to be represented, not by a newly created Uintah Band, but by the Affiliated Ute Citizens group ("AUC") and later by the Ute Distribution Corporation ("UDC"). *Affiliated Ute Citizens*, 406 U.S. at 143-44 (the Act provided for "the selection of authorized representatives" for the mixed-bloods, the AUC "was the product of this organizational power" and the "AUC itself created . . . [the] UDC").

Petitioners do not cite any language in the UPA or any other authority that suggests the UPA "expelled" the Uintah Band and "rendered the Uintah Band independent from the Ute Tribe." Pet. at 5, 15.

That is because there is none. The UPA terminated Indian status for certain individuals, not bands. *Affiliated Ute Citizens*, 406 U.S. at 134-35. In the face of this authority Petitioners resort to sleight of hand. They assert that "the Uintah Band has always been known throughout the Reservation as the 'Mixed-bloods,'" implying that the Ute Partition Act expelled the Uintah Band because it terminated the Indian status of "mixed-bloods." Pet. at 4. Their unsupported assertion is contrary to the plain language of the UPA. "Mixed-blood" is defined in the Act by reference to individual blood quantum and choice, with no reference to band membership.[4] Petitioners themselves admit that hundreds of Uintahs remained members of the Ute Tribe after termination of the Indian status of mixed-blood individuals in 1961. Pet. at 5 (acknowledging that over 200 Uintahs, roughly 30% of Uintah Band descendants, remained Ute Tribe members). Not only did Uintah Band descendants remain Ute Tribe members, but also individuals of Uncompahgre and Whiteriver Band derivation appeared on the official mixed-blood roll and their status as Indians was terminated. While the Indian status of many Uintah individuals was terminated,

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[4] Rather than referring to the Secretary of the Interior's official rolls, Petitioners append to their brief an unofficial roll prepared nearly ten years later. *See* Pet. App. 67-98. That unofficial roll specifically states that "band identification [was] added," making clear that the official roll includes no band affiliation identification. *See* Pet. App. 67; 21 Fed. Reg. 2208-2220.

that of many others was not and the Uintah Band remains one of the three constituent Bands of the Ute Tribe. There is no colorable basis for the "Uintah Band expulsion" claim where the UPA makes no reference to bands and where Uintah Band descendants remain Ute Tribe members after termination of the Indian status of "mixed-blood" individuals. Petitioners' contention that the UPA reconstituted the Uintah Band as a group distinct from the Ute Tribe is inconsistent with the UPA, settled judicial authority, and the historical facts on which they are based. It provides no ground for certiorari.

II. PETITIONERS ARE NOT MEMBERS OF THE UINTAH BAND, ARE NOT MEMBERS OF THE UTE TRIBE, AND ARE NOT INDIANS.

A. Petitioners Are Not Members Of The Uintah Band.

Given that the Uintah Band was one of the three bands that joined in forming the Ute Tribe and that the rights of the Uintah Band are now exercised by the Ute Tribe as a whole, *supra* at 4-10, the Ute Tribe has sole authority to make the membership determination whether Petitioners are Uintah Band members. That is so because the courts have consistently held that "a tribe has the *complete authority* to determine all questions of its own membership," *Martinez v. Southern Ute Tribe of the Southern Ute Reservation*, 249 F.2d 915, 920 (10th Cir. 1957) (emphasis added), and "[a] tribe's right to define its own membership for tribal purposes has long been recognized as

central to its existence as an independent political community," *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978). Congress specifically endorsed the Ute Tribe's control over its membership determinations in the UPA. *See* 25 U.S.C. § 677d ("New membership in the tribe [after the publication of the UPA rolls] shall [] be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder."). The Ute Tribe maintains precise census records reflecting Ute Tribe membership and derivation from each of the Ute Tribe's three constituent bands. Those official records reflect that Petitioners are not now and never have been members of either the Ute Tribe or the Uintah Band.

Petitioners' claim to be members of the Uintah Band is in any event suspect and contrary to their own prior representations. At Petitioner Reber's initial appearance before the state district court his counsel disavowed any association of Petitioners with the Uintah Band: "These aren't Uintah Utes. . . . They're not Uintah Utes, they're Timpanogos, . . . Timpanogos are not Uintah Utes. We're not making any claims as Uintah Utes." R. 578: 5-6. At the same time they were disclaiming any affiliation with the Uintah Utes in the Utah state courts, Petitioners alleged membership in the "Uinta Band of Utes" in litigation before the federal courts in the District of

Columbia.[5] R. 144. Petitioners later filed with the state district court below a "Clarification of Facts" alleging that they were "Indian[s] of Utah Territory" and that "the Shoshone Indians of Utah Territory are Indians for whom the reservation was set apart." R. 125, 126.

B. Petitioners Are Not Members Of The Ute Tribe.

Petitioners argue that their Indian status was wrongfully terminated by the UPA because they were born prior to the UPA but did not appear on the UPA rolls.[6] Pet. at 4-5, 16. The individuals listed on those rolls, however, were Tribal members prior to the UPA. *See* 25 U.S.C. § 677g. Petitioners failed to raise this claim below, but even if they had, the evidence shows that they never qualified for membership in the Tribe. Petitioners stipulated that they are 1/16 Indian by heritage, *see infra* at 14-15, and that blood quantum was never sufficient for membership under Tribal law. Beginning in 1938, the Tribe required 1/8 Ute blood quantum for membership and the requirement steadily increased to the current requirement of 5/8

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[5] Petitioners Atkins, Thunehorst, and Reber also represented themselves as belonging to the "Timpanogos Tribe" in litigation against the State of Utah. *See supra* at 6.

[6] Petitioners did not properly present this issue to the Utah Supreme Court and that Court did not rule on the issue. Consequently, the issue is not properly before this Court. *See, e.g., Adams v. Robertson*, 520 U.S. 83, 86 (1996).

Ute blood quantum. Thus, while Petitioner Reber's mother met the 1/8 blood requirement and was therefore listed on the Tribal rolls before termination, Mr. Reber and the other Petitioners were never members and never appeared on the Tribal rolls. Consequently, they properly did not appear on the UPA rolls.

In any case, the effect of the UPA on individuals, like Petitioners, who are the children of those listed on the mixed-blood roll is settled. *First*, Ute Tribe membership requirements specifically preclude from membership descendants of individuals listed on the mixed-blood roll. *See* App. 34, Ordinance 92-05, Art. IV, Sec. C(2); *Von Murdock*, 132 F.3d at 536 ("Nor can the children of a terminated mixed-blood claim membership in the tribe through their mixed-blood parent.") (quotation omitted). *Second*, as descendants of mixed-blood individuals Petitioners are not entitled to rights granted under federal statute or to the rights of tribal members. 26 Fed. Reg. 8042 ("all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable [to those listed on the mixed-blood roll] . . . and the laws of the several states shall apply . . . in the same manner as they apply to other citizens within their jurisdiction"); *Von Murdock*, 132 F.3d at 538-539, 540 ("The right of each individual to participate in the enjoyment of [tribal hunting and fishing rights] depended upon tribal membership" and descendants of the mixed-blood individuals terminated by the Ute Partition Act possess no right to hunt and

fish on the Uintah and Ouray Reservation) (quoting *Gritts v. Fisher*, 224 U.S. 640, 642 (1912)). *Third*, such individuals are subject to state criminal jurisdiction. *Gardner v. United States*, 25 F.3d 1056, 1994 WL 170780 at *3 (10th Cir. 1992) (unpublished) ("[the descendants of individuals listed on the mixed-blood roll are] subject to state criminal jurisdiction").

C. Petitioners Are Not Indians.

The Utah Supreme Court properly concluded that Petitioners can not meet the ordinary tests of Indian status. To determine Indian status for criminal jurisdiction purposes, courts utilize the two-part test set forth in *United States v. Rogers*, 45 U.S. (4 How.) 567 (1846). That test examines whether an individual (i) "has a significant degree of Indian Blood" and (ii) "is recognized as an Indian by a tribe or society of Indians or by the federal government." *See Utah v. Perank*, 858 P.2d 927, 932 (Utah 1992). Heritage derived from ancestors whose Indian status has been terminated is excluded from consideration in this examination. *See, e.g., St. Cloud v. United States*, 702 F. Supp. 1456, 1462-66 (D.S.D. 1988) ("Case law confirms the conclusion that the termination act ends the federal trust relationship with St. Cloud and subjects him to state jurisdiction.").

The Utah Supreme Court concluded that, on the basis of Petitioners' stipulated facts, they are not Indians under the *Rogers* test. Petitioners stipulated that their blood quantum was $^1/_{16}$ Indian and $^{15}/_{16}$

non-Indian. R. 364. That is not a significant quantity of Indian blood under any case, even setting aside the fact that the Indian status of the only person through whom each claims Indian blood was terminated by the UPA. R. 362 (citing cases). When, as the case law requires, that blood quantum is disregarded, Petitioners do "not have any Indian blood for the purposes of the *Rogers* analysis." R. 361. Nor, as the Utah Supreme Court held, have Petitioners been "recognized" as Indians by either the federal government or a tribe or society of Indians. *Reber*, at *4-5. Petitioners acknowledge that they are not members of any tribe recognized by the United States; Petitioners have claimed and disclaimed membership and affiliation with any number of Indian groups, *see supra* at 11-12; and they have provided no support for their present claim that they are Uintah Band members.[7] They are self-proclaimed Indians, "recognized"

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[7] When pressed by the trial court below, Petitioners refused to offer even a name by which the tribal entity to which they supposedly belong is recognized:

The Court:	[D]o you claim that he [Mr. Reber] has been recognized by an association or tribe?
Mr. Humiston:	Yes.
The Court:	What association or tribe do you –
Mr. Humiston:	The Indians of Utah Territory associated with the Uintah band.
The Court:	Is there a specific group or organization which calls themselves the Indians of Utah Territory?

(Continued on following page)

as Indians by no one other than themselves, and certainly not by the federal government or any tribe or society of Indians.

III. PETITIONERS SEEK TO DISRUPT THE SETTLED JURISDICTIONAL FRAMEWORK.

The Ute Tribe and the State of Utah have for years cooperated in implementing the jurisdictional rules set out by this Court in *United States v. Montana*, 450 U.S. 544 (1981) and *Hagen v. Utah*, 510 U.S. 398 (1994). The Ute Tribe and State of Utah have signed a cooperative agreement regarding

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Mr. Humiston:	All of them. Under that title I'm aware there are – there is – the actual relevant inquiry on this, the general for determining whether a body of people constitutes an Indian tribe are set forth in 25 – Part 83 of the Code of Federal Regulations. . . .
The Court:	Well, my – I take from what you said that there is no organization that calls themselves the Indians of Utah Territory . . . is that right?
Mr. Humiston:	No. . . . it is an organization.
The Court:	What is the name of the organization?
Mr. Humiston:	I refer to them as the Indians of Utah Territory. That's the only name that I know would apply to all of them, but I am not in a position to officially give them that name. That's simply who they are.

R. 580:18-20.

jurisdiction over hunting and fishing on the Reservation. App. at 78-94. Tribal and State authorities agree that Petitioners are subject to state jurisdiction because they are non-Indians hunting illegally on land held in fee by non-Indians. The "friction" upon which Petitioners seek certiorari simply does not exist. Pet. at 12. Petitioners' claimed need to bring an end to over 50 years of "fractious" and "protracted" litigation is similarly without support.

CONCLUSION

For the foregoing reasons the Ute Tribe requests the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted this 17th day of September, 2007.

CHARLES L. KAISER
Counsel of Record

CHARLES A. BREER
PETER J. HACK
DAVIS GRAHAM & STUBBS LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202
Telephone: (303) 892-9400

Counsel for Amicus Ute Indian Tribe of the Uintah and Ouray Reservation

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

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CONSTITUTION AND BY-LAWS OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION UTAH

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APPROVED JANUARY 19, 1937

[SEAL]

University of Utah
American West Center
Reprinted: 1989

CONSTITUTION AND BY-LAWS OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION

PREAMBLE

We, the Ute Indians of the Uintah, Uncompahgre and Whiteriver Bands hereafter to be known as the Ute Indian Tribe of the Uintah and Ouray Reservation, in order to establish a more responsible tribal organization, promote the general welfare, encourage educational progress, conserve and develop our lands and resources, and secure to ourselves and our

posterity the power to exercise certain rights of home rule, not inconsistent with the Federal, State and local laws, do ordain and establish this Constitution for the Ute Indian Tribe of the Uintah and Ouray Reservation.

ARTICLE I – TERRITORY

The Jurisdiction of the Ute Indian Tribe of the Uintah and Ouray Reservation shall extend to the territory within the original confines of the Uintah and Ouray Reservation as set forth by Executive Orders of October 3, 1861 and January 5, 1882, and by the Acts of Congress approved May 27, 1902, and June 19, 1902, and to such other lands without such boundaries as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

ARTICLE II – MEMBERSHIP

SECTION 1. The membership of the Ute Indian Tribe of the Uintah and Ouray Reservation shall consist as follows:

(*a*) All persons whose names appear on the official tribal roll as of April 15, 1988.

(*b*) After April 15, 1988, members in the Ute Indian Tribe of the Uintah and Ouray Reservation shall be limited to those persons who possess at least five-eighths (5/8) degree Ute Indian blood derived from the blood quantum of Ute Indians whose names

appear on the Full-Blood Roll of March 27, 1956, published April 5, 1956, in 21 Federal Register 2208 *et seq.*

(*c*) The blood quantum of any applicant should be determined exclusively from his or her natural parents who are enrolled members of the tribe or who were enrolled members of the tribe at the time of their death.

(*d*) All applications for membership in the tribe filed by April 15, 1988, shall not be affected by this amendment.

SEC. 2. The Tribal Business Committee shall have the power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members.

(*a*) No property rights shall be acquired or lost through membership in this organization except as provided herein.

ARTICLE III – THE BUSINESS COMMITTEE

SECTION 1. The governing body of the Ute Indian Tribe of the Uintah and Ouray Reservation shall be a business committee, known as the Uintah and Ouray Tribal Business Committee.

SEC. 2. The Tribal Business Committee shall consist of six members, two (2) members duly elected from each of the three (3) bands of the Ute Indian

Tribe of the Uintah and Ouray Reservation, known as the Lintah, Uncompahgre and Whiteriver Bands.

SEC. 3 The members of the Tribal Business Committee shall be elected for a term of four (4) years, except at the first election, when one (1) member from each band shall be elected for a term of two (2) years; thereafter, their successors shall be elected for a term of four (4) years.

SEC. 4 The Tribal Business Committee, so organized, shall elect from within its own number (1) a chairman, (2) a vice-chairman; and from within or without, (3) a secretary, and (4) a treasurer, and such other officials and committees as may be deemed necessary.

SEC. 5 The first election of the Tribal Business Committee hereunder shall be called, held and supervised by the present Tribal Business Committee within sixty (60) days after the ratification and approval of this Constitution.

The candidate from each band receiving the highest number of votes shall hold office for a term of four (4) years, and the candidate from each band receiving the next highest number of votes shall hold office for two (2) years; thereafter, every two (2) years a Tribal Business Committeeman shall be elected from each band to represent such bands for a term of four (4) years.

After the first election, elections for the Tribal Business Committee shall be called at least sixty (60)

days prior to the expiration of the terms of office of the members of the Tribal Business Committee.

ARTICLE IV – NOMINATIONS AND ELECTIONS

SECTION 1. Any member of the Ute Indian Tribe of the Uintah and Ouray Reservation twenty-one (21) years of age or over, who has maintained a legal residence on the Uintah and Ouray Reservation for a period of one (1) year preceding the election, shall be entitled to vote and hold office.

SEC. 2. Any legal voter is eligible to serve as a member of the Tribal Business Committee.

SEC. 3. All elections shall be by secret ballot and shall be held in accordance with rules and regulations prescribed by the Tribal Business Committee, or by an election board appointed by the Tribal Business Committee.

ARTICLE V – VACANCIES AND REMOVAL FROM OFFICE

SECTION 1. If a member of the Tribal Business Committee or an elective official shall die, resign, be removed or recalled from office, permanently leave the reservation, or be found guilty of a felony or misdemeanor involving dishonesty in any Indian, State or Federal court, the position shall be declared vacant, at the discretion of the Tribal Business Committee, and they shall designate a time to hold a special election to fill the vacancy.

SEC. 2. The Business Committee may by four (4) affirmative votes, expel any member for neglect of duty or gross misconduct. Before any vote for expulsion is taken on the matter, such member or official shall be given a written statement of the charges against him at least five (5) days before the meeting of the Business Committee, before which he is to appear, and an opportunity to answer any and all charges at such designated Committee meeting. The decision of the Business Committee shall be final.

SEC. 3. Upon receipt of a petition signed by one-third of the eligible voters in any band calling for the recall of any member of the Committee representing said band, it shall be the duty of the Committee to call an election on such recall petition. No member may be recalled in any such eleciton unless at least thirty percent of the legal voters of the band which he represents shall vote at such election.

ARTICLE VI – POWERS OF THE TRIBAL BUSINESS COMMITTEE

SECTION 1. *Enumerated powers.* – The Tribal Business Committee of the Uintah and Ouray Reservation shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and By-laws, and subject to review by the Ute Bands themselves at any annual or special meeting:

(*a*) To negotiate with the Federal, State and local governments on behalf of the Tribe and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Ute Indian Tribe.

(*b*) To employ legal counsel for the protection and advancement of the rights of the Ute Indian Tribe of the Uintah and Ouray Reservation, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(*c*) To approve or veto any sale, disposition, lease or encumbrance of tribal lands, interest in tribal lands, or other tribal assets, which may be authorized or executed by the Secretary of the Interior, commissioner of Indian Affairs, or any other official or agency of government, provided that no tribal lands shall ever be encumbered or sold, except for governmental purposes, or leased for a period exceeding five years, except that leases for mining purposes or on irrigable land may be made for such longer periods as may be authorized by law.

(*d*) To advise the Secretary of the Interior with regard to all appropriation estimates, or Federal projects, for the benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation prior to the submission of such estimates to the Bureau of the Budget and to Congress.

(*e*) To make assignments of reservation land to members of the Ute Indian Tribe of the Uintah and

Ouray Reservation in conformity with Article VIII of this Constitution.

(*f*) To regulate all economic affairs and enterprises in accordance with the terms of a Charter that may be issued to the Ute Indian Tribe of the Uintah and Ouray Reservation by the Secretary of the Interior.

(*g*) To appropriate for salaries of tribal officials or other public purposes of the Tribe any available tribal funds, provided that any such appropriation made prior to July 1, 1940, shall be subject to review by the Secretary of the Interior.

(*h*) To levy taxes upon members of the Ute Indian Tribe of the Uintah and Ouray Reservation, and to require the performance of community labor in lieu thereof, and to levy taxes and license fees, subject to review by the Secretary of the Interior, upon non-members doing business within the Reservation.

(*i*) To exclude from the territory of the Uintah and Ouray Reservation persons not legally entitled to reside therein, under ordinances which shall be subject to review by the Secretary of the Interior.

(*j*) To enact resolutions or ordinances, not inconsistent with Article II of this Constitution governing adoption and abandonment of members, and to keep at all times a correct roll of the members of the Ute Indian Tribe of the Uintah and Ouray Reservation.

(*k*) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Ute Indian Tribe of the Uintah and Ouray Reservation, and providing for the maintenance of law and order and the administration of justice by establishing a Reservation Indian Court and defining its duties and powers.

(*l*) To safeguard and promote the peace, safety, morals and general welfare of the Ute Indian Tribe of the Uintah and Ouray Reservation by regulating the conduct of trade and the use and disposition of property upon the Reservation, provided that any ordinance directly affecting nonmembers of the Reservation shall be subject to review by the Secretary of the Interior.

(*m*) to charter subordinate organizations for economic purposes, and to regulate the activities of co-operative associations of members of the Ute Indian Tribe of the Uintah and Ouray Reservation by ordinance, provided that any such ordinance shall be subject to review by the Secretary of the Interior.

(*n*) To regulate the inheritance of property, real and personal, other than allotted lands, within the territory of the Uintah and Ouray Reservation, subject to review by the Secretary of the Interior.

(*o*) To regulate the domestic relations of members of the Ute Indian Tribe of the Uintah and Ouray Reservation by ordinances which shall be subject to review by the Secretary of the Interior.

(*p*) To provide for the appointment of guardians for minors and mental incompetents by ordinances or resolutions which shall be subject to review by the Secretary of the Interior.

(*q*) To cultivate and preserve native arts, crafts, culture, and Indian ceremonials.

(*r*) To adopt resolutions to regulate the procedure of the Tribal Business Committee itself, and all other tribal agencies and tribal officials of the Uintah and Ouray Reservation.

(*s*) To delegate to subordinate organizations or to co-operative organizations which are open to all members of the Ute Indian Tribe of the Uintah and Ouray Reservation any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

SEC. 2. *Manner of review.* – Any resolution. or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation who shall, within ten (10) days thereafter, approve or disapprove the same, and if such ordinance or resolution is approved, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may, within ninety (90) days from the date of enactment, rescind said ordinance or resolution for any cause, by notifying the Tribal Business Committee of such action; provided that if the Superintendent shall

refuse to approve any resolution or ordinance submitted to him within ten (10) days after its enactment, he shall advise the Tribal Business Committee of his reasons therefor, and the Committee, if such reasons appear to be insufficient may refer it together with the Superintendent's objections to the Secretary of the Interior, who may pass upon same and either approve or disapprove it within ninety (90) days from its enactment.

SEC. 3. *Future powers.* – The Tribal Business Committee may exercise such further powers as may in the future be delegated to them by the Secretary of the Interior, or by any other duly authorized official or agency of the Government.

SEC. 4. *Reserved powers.* – Any rights and powers heretofore vested in the Tribe or bands of the Uintah and Ouray Reservation but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the people of the Uintah and Ouray Reservation through the adoption of appropriate By-laws and constitutional amendments.

ARTICLE VII – BILL OF RIGHTS

SECTION 1. All members of the Ute Indian Tribe of the Uintah and Ouray Reservation over the age of twenty-one (21) years who have maintained legal residence on the Reservation for a period of one year immediately prior to any election shall have the right to vote in all tribal elections.

SEC. 2. All members of the Ute Indian Tribe of the Uintah and Ouray Reservation shall be accorded equal opportunities to participate in the economic resources and activities of the Reservation.

SEC. 3. All members of the Ute Indian Tribe of the Uintah and Ouray Reservation may enjoy, without hindrance, freedom of speech, worship, conscience, press, assembly and association.

SEC. 4. Any member of the Ute Indian Tribe of the Uintah and Ouray Reservation accused of any offense shall have the right to a prompt, open and public hearing, with due notice of the offense charged, and shall have the right to summon witnesses on his own behalf. Trial by jury may be demanded by any prisoner accused of any offense punishable by more than thirty (30) days inprisonment. Excessive bail shall not be required, and cruel punishment shall not be imposed.

ARTICLE VIII – LAND

SEC. 1. *Allotted lands.* – Allotted lands, including heirship lands, within the Uintah and Ouray Reservation shall continue to be held as heretofore, by their present owners. It is recognized that under existing law such lands may be condemned for public purposes, such as roads, public buildings, or other public improvements, upon payment of adequate compensation, by any agency of the State of Utah, or of the Federal government, or by the Tribe itself. It is further recognized that under existing law such lands

may be inherited by the heirs of the present owner, whether or not they are members of the Ute Indian Tribe of the Uintah and Ouray Reservation. Likewise, it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State taxes and may then be mortgaged or sold. The right of the individual Indian to hold or part with his land, as under existing law, shall not be abrogated by anything contained in this Constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the Ute Indian Tribe of the Uintah and Ouray Reservation either in exchange for a money payment or in exchange for an assignment to cover the same land or other land, as hereinafter provided.

SEC. 2. *Tribal lands.* – The unallotted lands of the Uintah and Ouray Reservation, and all lands which may hereafter be acquired by the Ute Indian Tribe of the Uintah and Ouray Reservation or by the United States in trust for the Ute Indian Tribe of the Uintah and Ouray Reservation, shall be held as tribal lands, and no part of such lands shall be mortgaged or sold. Tribal lands shall not be allotted to individual Indians but may be assigned to members of the Ute Indian Tribe of the Uintah and Ouray Reservation, or leased, or otherwise used by the Tribe, as hereinafter provided.

SEC. 3. *Leasing of tribal lands.* – Tribal lands may be leased by the Tribal Business Committee,

with the approval of the Secretary of the Interior, for such periods of time as are permitted by law.

In the leasing of tribal lands, preference shall be given, first, to Indian co-operative associations, and, secondly, to individual Indians who are members of the Ute Indian Tribe of the Uintah and Ouray Reservation.

No lease of tribal lands to a non-member shall be made by the Tribal Business Committee unless it shall appear that no Indian co-operative association or individual member of the Tribe is able and willing to use the land and to pay a reasonable fee for such use.

Grazing permits covering tribal land may be issued by the Tribal Business Committee, with the approval of the Secretary of the Interior, in the same manner and upon the same terms as leases.

SEC. 4. *Grant of standard assignments*, – In any assignment of tribal lands which now are owned by the Tribe or which hereafter may be acquired for the Tribe by the United States or purchased by the Tribe out of tribal funds, preference shall be given to heads of families which have no allotted lands or interest in allotted lands.

No allotted member of the Tribe who may hereafter have the restrictions upon his land removed and whose land may thereafter be alienated shall be entitled to receive an assignment of land as a landless Indian.

The Tribal Business Committee may, if it sees fit, charge a fee of not to exceed five dollars ($5.00) on approval of an assignment made under this section. Assignments made under this section shall be for the primary purpose of establishing homes for landless Indians, and shall be known as standard assignments.

SEC. 5. *Tenure of standard assignments.* – If any member of the Tribe holding a standard assignment of land shall, for a period of two years, fail to use the land so assigned or shall use such land for any unlawful purpose, his assignment may be cancelled by the Tribal Business Committee after due notice and an opportunity to be heard, and the said land may be reassigned in accordance with the provisions of section 4 of this article.

Upon the death of any Indian holding a standard assignment, his heirs or other individuals designated by him, by will or by written request, shall have a preference in the reassignment of the land, provided such persons are members of the Ute Indian Tribe of the Uintah and Ouray Reservation and are eligible to receive such assignment.

SEC. 6. *Grant of exchange assignments.* – Any member of the Tribe who owns an allotment or any share of heirship land may voluntarily transfer his interest in such land to the Tribe in exchange for an assignment to the same land or other land of equal value. If the assignee prefers, he may receive, in lieu of a specific tract of land, a proportionate share in a

larger grazing unit. Assignments made under this section shall be known as exchange assignments.

Sec. 7. *Leasing of exchange assignments.* – Exchange assignments may be used by the assignee or leased by him to Indian co-operative associations, to individual members of the Tribe, or, if no individual Indian or Indian co-operative association is able and willing to rent the land at a reasonable fee, such assignment may be leased to non-members in the same manner as allotted lands.

SEC. 8. *Inheritance of exchange assignments.* – Upon the death of the holder of an exchange assignment, his interest shall be reassigned by the Tribal Business Committee to his heirs and devisees, subject to the following conditions:

(*a*) The land may not be reassigned to any heir or devisee who is not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation except that a life assignment may be made to the surviving widow or widower of the holder of an assignment.

(*b*) Such lands may not be reassigned to any heir or devisee who already holds more than an economic unit of grazing land or other land or interest in lands of equal value, to be determined from time to time by the Tribal Business Committee.

(*c*) Such lands may not be subdivided among heirs or devisees into units too small for convenient management. No area of grazing land shall be subdivided into units smaller than one-hundred-sixty (160)

acres, and no area of agricultural land shall be subdivided into units smaller than two-and-one-half (2½) acres, except that land used for buildings or other improvements may be divided to suit the convenience of the parties. Where it is impossible to divide the land properly among the eligible heirs or devisees, the Tribal Business Committee may issue to the eligible heirs or devisees grazing permits or other interest in tribal lands of the same value as the assignment of the decedent.

(*d*) If there are no eligible heirs or devisees of the decedent, the land shall be eligible for reassignment in accordance with the provisions of section 4 of this article.

SEC. 9. *Inheritance of improvements.* – Improvements of any character made upon assigned land may be bequeathed to and inherited by members of the Ute Indian Tribe of the Uintah and Ouray Reservation or otherwise disposed of under such regulations as the Tribal Business Committee shall provide. No permanent improvements shall be re-moved from the land without the consent of the Tribal Business Committee.

SEC. 10. *Exchange of assignments.* – Assignments may be exchanged between members of the Ute Indian Tribe of the Uintah and Ouray Reservation by common consent in such a manner as the Tribal Business Committee shall designate.

SEC. 11. *Use of unassigned tribal land.* – Tribal land which is not assigned, including tribal timber

reserves, shall be managed by the Tribal Business Committee for the benefit of the members of the entire Tribe, and any cash income derived from such land shall accrue to the benefit of the Tribe as a whole. All action of the Tribal Business Committee with respect to such lands shall be in conformity with departmental regulations for the protection of Indian range and timber resources authorized by section 6 of the Act of June 18, 1934.

SEC. 12. Purchase of land by the tribe. – Tribal funds may be used, with the consent of the Secretary of the Interior, to acquire land, under the following conditions:

(*a*) Land within the Uintah and Ouray Reservation or adjacent to the boundaries thereof which is not now in Indian ownership may be purchased by or for the Ute Indian Tribe of the Uintah and Ouray Indian Reservation.

(*b*) Restricted lands, which are in heirship status at the time of the adoption and approval of this Constitution, may be purchased by or for the Ute Indian Tribe of the Uintah and Ouray Reservation, with the consent of all the adult heirs, and the legal guardians of minor heirs, payment therefor to be made as may be agreed upon.

(*c*) Land owned by any member of the Tribe who is over the age of sixty (60) years or who is physically incapacitated, may be transferred by its owner to the Tribe in exchange for a pension of not more than twice the annual rental value of the land for the life

of the pensioner, to be paid out of available tribal funds.

(*d*) Excess land owned by any member of the Tribe may be purchased by the Tribe, with the consent of the owner, payments to be made under such terms as may be agreed upon.

(*e*) Land owned by any member of the Tribe who desires to leave the Reservation permanently may be purchased by the Tribe, under such terms as may be agreed upon.

SEC. 13. *Method of making assignments.* – Applications for assignments shall be filed with the Secretary of the Tribal Business Committee and shall be in writing, setting forth the name of the person or persons applying for the land and as accurate a description of the land desired as the circumstances will permit. Notices of all applications received by the Secretary shall be posted by him in the agency office and in at least three other conspicuous places on the Reservation for not less than twenty (20) days before action is taken by the Tribal Business Committee. Any member of the Tribe wishing to oppose the granting of an assignment shall do so in writing, setting forth his objections, to be filed with the Secretary of the Tribal Business Committee, and may if he so desires appear before the Tribal Business Committee to present evidence. The Secretary of the Tribal Business Committee shall furnish the Superintendent or other officials in charge of the agency a complete record of all action taken by the Tribal Business

Committee on applications for assignments of land, and a complete record of assignments shall be kept in the agency office and shall be open for inspection by members of the Tribe.

The Tribal Business Committee shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of the Interior.

ARTICLE IX – REFERENDUM

Upon a petition of at least one-third (⅓) of the eligible voters of the Ute Indian Tribe of the Uintah and Ouray Reservation, or upon the request of a majority of the members of the Tribal Business Committee, any enacted or proposed ordinance or resolution of the Tribal Business Committee shall be submitted to a popular referendum, and the vote of the majority of the qualified voters voting in such referendum shall be conclusive and binding on the Tribal Business Committee provided that at least thirty (30) percent of the eligible voters shall vote in such election.

ARTICLE X – AMENDMENTS

Amendments to the Constitution and By-laws may be ratified and approved in the same manner as this Constitution and By-laws. Whenever the Tribal Business Committee shall, by an affirmative vote of four or more members, call for the submission of an

amendment, the Secretary of the Interior shall call an election upon the proposed amendment. If at such election the amendment is adopted by a majority of the qualified voters of the Tribe voting thereon and if at least thirty (30) percent of those entitled to vote shall vote in such election, such amendment shall be submitted to the Secretary of the Interior and if approved by him, shall thereupon take effect.

BY-LAWS OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION

ARTICLE I – DUTIES OF OFFICERS

SECTION 1. *Chairman of the Tribal Business Committee.* – The Chairman of the Tribal Business Committee shall preside over all meetings of the Committee, shall perform all duties of a Chairman and exercise any authority delegated to him by the Committee. He shall have the privilege of voting.

SEC. 2. *Vice-Chairman of the Tribal Business Committee.* – The Vice-Chairman shall assist the Chairman when called upon so to do and in the absence of the Chairman, he shall preside. When so presiding, he shall have all the rights, privileges, duties and responsibilities of the Chairman.

SEC. 3. *Secretary of the Tribal Business Committee.* – The Secretary of the Tribal Business Committee shall conduct all tribal correspondence and shall keep an accurate record of all matters transacted in Tribal Business Committee meetings. It shall be his duty to

submit promptly to the Superintendent of the jurisdiction and the Commissioner of Indian Affairs copies of all minutes of regular and special meetings of the Tribal Business Committee.

SEC. 4. *Treasurer of the Tribal Business Committee.* – The Treasurer of the Tribal Business Committee shall accept, receive, receipt for, preserve, and safeguard all funds in the custody of the Tribal Business Committee, whether same be tribal funds or special funds for which the Tribal Business Committee is acting as trustee or custodian. He shall deposit all such funds in such bank or elsewhere as directed by the Tribal Business Committee and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody, such report being made in writing to the Tribal Business Committee at regular meetings and at such other times as requested by the Tribal Business Committee.

He shall not pay out or otherwise disburse any funds in his possession or custody, or in the possession or custody of the Tribal Business Committee, except when properly authorized so to do by resolution duly passed by the Tribal Business Committee.

The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the Tribal Business Committee and at such other times as the Tribal Business Committee or the Commissioner of Indian Affairs may direct.

The Treasurer shall be required to give a bond satisfactory to the Tribal Business Committee and to the Commissioner of Indian Affairs.

The Treasurer shall be present at all special and regular meetings of the Tribal Business Committee.

SEC. 5. *Appointive officers.* – The duties of all appointive committees or officers of the Ute Indian Tribe of the Uintah and Ouray Reservation shall be clearly defined by resolution of the Tribal Business Committee at the time of their creation or appointment. Such committees and officers shall report from time to time as required by the Tribal Business Committee, and their activities and decisions shall be subject to review by the Tribal Business Committee upon petition of any person aggrieved.

ARTICLE II – QUALIFICATIONS OF COMMITTEEMEN

No person shall be a candidate for membership in the Tribal Business Committee unless he shall be a member of the Ute Indian Tribe of the Uintah and Ouray Reservation and shall have resided in the territory thereof for a period of one year next preceding the election and be at least twenty-one (21) years of age.

ARTICLE III – CERTIFICATION OF ELECTION

It shall be the duty of the members of the Tribal Business Committee to certify to the election of duly elected committee members. This shall be done

within five days after the election and a certificate filed with the Secretary of the Business Committee.

ARTICLE IV – INSTALLATION OF COMMITTEEMEN

Newly elected members who have been duly certified, shall be installed at the first regular meeting of the Tribal Business Committee following the election, upon subscribing to the following oath:

"I _____, do solemnly swear (or affirm) that I shall support and uphold the Constitution of the United States, the Constitution and laws of the State of Utah, and the Constitution and By-laws and Ordinances of the Ute Indian Tribe of the Uintah and Ouray Reservation in the State of Utah; that I shall in all respects faithfully and fully perform the duties of my office as a member of the Tribal Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation, so help me God."

The oath may be taken and subscribed to before the Superintendent or any other person authorized to administer oath in the State of Utah.

ARTICLE V – SALARIES

The Tribal Business Committee may prescribe such salaries of officials or Tribal Business Committee members as it deems advisable from such funds as may be available.

ARTICLE VI – TIME, PLACE, AND PROCEDURE OF REGULAR MEETINGS

SECTION I. *Meetings.* – Regular meetings of the Tribal Business Committee shall be held on the second Monday of each month at Fort Duchesne, Utah, at a designated building or hall where official records will be kept. Special meetings may be called by written notice duly served on each committee member a reasonable time before said meeting, signed by the Chairman or by a majority of the Tribal Business Committee members, and when so called, the Tribal Business Committee shall have the power to transact business as in regular meetings.

SEC. 2. *General tribal meetings.* – There shall, on the first Wednesday in November, be an annual meeting open to all members of the Ute Indian Tribe of the Uintah and Ouray Reservation held at a designated place which shall be approved by the Tribal Business Committee.

It shall be the duty of the Chairman at this meeting to make a report of all activities of the Tribal Business Committee throughout the year, and to outline the proposed plans for economic and social betterment of the Tribe.

Special tribal meetings may be called by the Chairman of the Tribal Business Committee, provided that due notice is posted throughout the Reservation at least thirty (30) days prior to such meeting.

Fifty (50) legal voters of the Tribe, may, at any time, by written petition, call a general meeting, provided that at least fifteen (15) days notice is posted throughout the Reservation.

SEC. 3. *Quorum.* – No tribal business shall be transacted unless a quorum is present.

A quorum of the Tribal Business Committee shall consist of four (4) members of the Tribal Business Committee.

A quorum of the general tribal meeting shall consist of not less than seventy-five (75) voters at the annual meeting, and seventy (70) voters at a special meeting.

SEC. 4. *Order of business.* – The following order of business is established for all meetings:

1. Call to order by the Chairman.
2. Roll call.
3. Ascertainment of a quorum.
4. Reading the Minutes of last meeting.
5. Adoption of Minutes by vote or common consent.
6. Unfinished business.
7. New business.
8. Adjournment.

SEC. 5. *Ordinances and resolutions.* – All final decisions of the Tribal Business Committee on matters

of general and permanent interest to the members of the Ute Indian Tribe of the Uintah and Ouray Reservation shall be embodied in ordinances. Such ordinances shall be collected and published from time to time for the information and education of the members of the Tribe.

All final decisions of the Tribal Business Committee on matters of temporary interest (such as acting on reservation budget for a single year, or petitions to Congress or to the Secretary of the Interior) or relating especially to particular individuals or officers (such as adoption of members, instructions for tribal employees, or rules of order for the Tribal Business Committee) shall be embodied in resolutions. Such resolutions shall be recorded in a special book and shall be open to public inspection.

All questions of procedure (such as acceptance of committee reports, invitations to outsiders to speak) shall be decided by motion duly passed, or by ruling of the Chairman if no opposition is heard. In all ordinances, resolutions or motions, the Tribal Business Committee may act by a majority vote, but all matters of importance shall be fully discussed and a reasonable attempt made to secure unanimous agreement, and parliamentary procedure shall otherwise be governed by Robert's Rules of Order.

SEC. 6. *Legislative forms.* – Every ordinance shall begin with the words, "*Be it enacted by the Uintah and Ouray Tribal Business Committee* * * *."

Every resolution shall begin with the words, "*Be it resolved by the Uintah and Ouray Tribal Business Committee, * * * .*"

ARTICLE VII – RATIFICATION OF CONSTITUTION AND BY-LAWS

This Constitution and By-laws attached hereto shall be in full force and effect whenever a majority of the adult voters of the Uintah, Uncompahgre and Whiteriver Bands of the Uintah and Ouray Reservation, voting at an election called by the Secretary of the Interior in which at least thirty (30) percent of the eligible voters shall vote, shall have ratified such Constitution and By-laws and the Secretary of the Interior shall have approved same, as provided in the Act of June 18, 1934, as amended by the Act of June 15, 1935.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved November 20, 1936, by the Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the Ute Indians of the Uintah, Uncompahgre and Whiteriver Bands of the Uintah and Ouray Reservation and was on December 19, 1936, duly adopted by a vote of 347 for, and 12 against, in an election which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934, (48

Stat. 984), as amended by the Act of June 15, 1935, (49 Stat. 378).

ROY SMITH,
Chairman of Election Board.
ORAN CURRY,
Chairman of Tribal Business Committee.
ROBERT L. BENNETT,
Secretary.

C.C. Wright,
Superintendent in charge of the Reservation.

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Constitution and By-laws of the Ute Indian Tribe, of the Uintah and Ouray Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and By-laws are hereby declared inapplicable to these Indians.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and By-laws.

Approval recommended: January 12, 1937.

WILLIAM ZIMMERMAN, JR.,
Acting Commissioner of Indian Affairs.

HAROLD L. ICKES,
Secretary of the Interior.
[SEAL]

WASHINGTON, D. C., *January 19, 1937*

Ordinance No. 92 92-05

Uintah & Ouray Agency
Fort Duchesne, Utah

ENROLLMENT ORDINANCE OF THE UTE INDIAN TRIBE

BE IT ENACTED BY THE UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE OF THE UTE INDIAN TRIBE by virtue of its inherent authority as a sovereign Indian tribe, as recognized and confirmed by the Act of Congress of June 18, 1934, 48 Stat. 984, 25 U.S.C. §§ 461 *et seq.*, and pursuant to its power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members as set forth at Article II, Section 2 of the Constitution of the Ute Indian Tribe of the Uintah and Ouray Reservation, that it hereby establishes the procedures and rules for acquiring, retaining and forfeiting membership in the Ute Indian Tribe.

ARTICLE I
DECLARATION OF PURPOSE

Subject to the review powers of the Secretary of the Interior, the Business Committee is empowered to enact ordinances governing enrollment and adoption into and abandonment of membership in the Tribe. *See,* Article II, Section 2 and Article VI, Section 1(j) of the Constitution of the Ute Indian Tribe of the Uintah and Ouray Reservation. There being at this time no

general ordinance governing enrollment procedures and rules for the Tribe, the Business committee deems it appropriate and necessary that a tribal mechanism exist to govern and guide the submittal of membership applications and the granting or denial of the same.

ARTICLE II
SAVINGS CLAUSE

All applications for membership in the Tribe duly and properly filed with the Clerk on or before the effective date of this Ordinance shall be unaffected by the terms hereof, and shall be acted upon in accordance with those requirements for membership of the Tribe in effect on the date of the application's filing.

ARTICLE III
DEFINITIONS

"*Applicant*" means every person who seeks enrollment in the Tribe pursuant to the terms of this Ordinance, and includes the parent or legal guardian of a minor or of an incompetent person seeking enrollment in the Tribe.

"*Business Committee*" means the Uintah and Ouray Tribal Business Committee of the Ute Indian Tribe.

"*Clerk*" means the Clerk of the Vital Statistics Office of the Tribe or such other employee of the Tribe

as may be designated to perform the duties set forth in this Ordinance.

"*Effective Date*" means the date on which this Ordinance is approved by the Secretary of the Interior or his duly authorized representative.

"*Tribe*" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

"*Tribal Court*" means the Tribal Court of the Ute Indian Tribe of the Uintah and Ouray Reservation, as established in Chapter 3 of Title 1 of the Law and Order Code of the Tribe, and shall include any appellate tribunals of such Tribal Court.

ARTICLE IV
MEMBERSHIP REQUIREMENTS AND STANDARDS

A. *Continuation of Enrollment* – Every person duly and properly enrolled as a member of the Tribe on the effective date of this Ordinance shall continue to be a member of the Tribe without further action being required on the part of the member or the Business Committee.

B. *Membership Eligibility* – No person shall be enrolled as a member of the Tribe unless such person:

1. Is the natural offspring of an enrolled member of the Tribe; and

2. Possesses at least a five-eights (5/8) degree of Ute Indian blood of the Tribe derived from

his/her natural parents who are enrolled members of the Tribe.

C. *Quantification of Blood Quantum* – An applicant's degree of blood of the Tribe shall be calculated by determining the blood quantum of the applicant's natural parents who are members of the Tribe, adding the total degree of blood of the Tribe possessed by the applicant's natural parents and thereafter dividing such total by two (2). An applicant shall not be permitted to calculate his/her blood quantum by relying on:

1. Indian blood derived from any Indian tribe other than that of the Tribe.

2. Indian blood or blood of the Tribe derived from any person who appears on the Mixed-Blood roll of March 27, 1956, published April 5, 1956, 21 Fed. Reg. 2208 *et seq.*

3. The Indian blood quantum of a natural parent who for any reason is not a duly enrolled member of the Tribe.

D. *Blood Quantum of Existing Members* – Absent conclusive evidence of fraud, every person whose name appears on the membership roll of the Tribe on the effective date of this Ordinance shall be conclusively presumed to possess that degree of blood of the Tribe listed on that roll with their name.

E. *Dual Enrollment* – The other sections of this Ordinance notwithstanding, no person may be enrolled in the Tribe or remain a member thereof if such

person is an enrolled member of any other Indian tribe, band or group that possesses a government-to-government relationship with the United States.

F. *Adoption* – There shall be no adoption into the Tribe. The process of enrolling in the Tribe shall be the exclusive standard and procedure for any person to gain rights to tribal membership or tribal assets.

ARTICLE V
DATE AND RIGHTS OF MEMBERSHIP

A. *Date Membership Deemed Effective* – No person or applicant shall acquire any rights to tribal property, entitlements to tribal funds or privileges of tribal membership until such person or applicant has filed an application for membership with the Clerk *and* has been accepted into membership by resolution of the Business Committee.

B. *Apportionment of Rights* – Benefits and rights related to membership in the Tribe are not apportionable over time and such benefits and rights continue only during the duration of a member's life.

ARTICLE VI
APPLICATIONS FOR MEMBERSHIP

A. *Application* – Any person wishing to apply for membership in the Tribe shall submit his/her enrollment application on a form designed for that

purpose acquired from the Clerk. Applications for membership in the Tribe shall:

1. In the case of a minor or an incompetent person, be made on the applicant's behalf by the applicant's parent or legal guardian.

2. Be signed by the applicant, or in the case of minors or incompetent persons the applicant's parent or legal guardian, who shall certify to the truthfulness of the claims and information submitted on the applications or as attachments or exhibits thereto.

3. Be accompanied by certified copies of all necessary supporting documentation, *e.g.,* birth certificates, records of the Bureau of Indian Affairs and Proof of Paternity, and such further evidence as may be requested by the Clerk.

B. *Submittal of Application* – All applications for enrollment in the Tribe shall be submitted to the Clerk, who shall note thereon the date of the application's filing. In the event the application submitted to the Clerk is incomplete or otherwise in need of additional documentation, the date of the application's filing shall be deemed to be that date on which the applicant supplies to the Clerk *all* additional documentation or evidence required by him/her to evaluate the applicant's eligibility for membership in the Tribe.

ARTICLE VII
ENROLLMENT PROCEDURE

A. *Burden of Proof* – The burden of proof of eligibility for membership in the Tribe rests solely on the applicant or others acting on the applicant's behalf.

B. *Processing of Applications* – Following receipt of an enrollment application for the Tribe, the Clerk shall:

1. Review the application and supporting documentation to determine whether there is sufficient verified evidence to determine the applicant's eligibility for membership in the Tribe.

2. If there is insufficient evidence for the Clerk to make a decision on an applicant's eligibility for membership in the Tribe, the Clerk shall notify the person submitting the application that the same will not be processed further unless and until such additional evidence is provided to him/her.

3. When in the opinion of the Clerk there exists sufficient evidence on which to determine an applicant's eligibility for membership, the Clerk shall:

a. within sixty (60) days of receipt of the application, prepare a written evaluation and recommendation as to the applicant's eligibility for membership in the Tribe; and

b. submit the evaluation, recommendation and original application and supporting

documentation to the Business Committee, with a copy thereof being promptly supplied to the applicant or those acting on the applicant's behalf.

C. *Consideration of Applications* – The Business Committee shall establish a schedule of meetings to decide whether applicants will be accepted into membership in the Tribe. Such meetings shall occur on not less than a monthly basis, if there exist enrollment applications to be acted upon, and decisions on membership applications shall be governed by the following procedures:

1. All persons whose applications for membership for membership are to be considered at a meeting of the Business Committee shall be given not less than ten (10) days notice of the meeting on their application by first class mail addressed to the applicant or the person acting on the applicant's behalf.

2. The Secretary of the Business Committee shall keep written minutes of the proceedings on membership applications and of the vote taken on each application.

3. No decision of the Business Committee either approving or denying a person's enrollment in the Tribe or otherwise disposing of an enrollment matter shall be final unless made by a majority of a quorum of the Business Committee.

4. Final enrollment decisions of the Business Committee shall be embodied in a written resolution of

that body signed by not less than the presiding officer of the Business Committee.

a. Resolutions containing decisions on membership applications shall be prepared and certified by the Clerk within five (5) days after the Business Committee meeting at which a vote was taken on the resolution.

b. Resolutions denying membership in the Tribe to an applicant shall state with reasonable clarity the reason(s) for the denial.

D. *Notice of Action* – Within ten (10) days of a Business Committee meeting at which action was taken on an enrollment application, the Clerk shall send a notice by United States mail to the applicant, or those acting on the applicant's behalf, of the action taken by the Business Committee. Whenever an application for membership in the Tribe has been denied by the Business Committee, the notice shall also contain the reason(s) for the denial and shall inform the applicant of his/her opportunity for a reconsideration of the application.

ARTICLE VIII
DISENROLLMENT

A. *Report of Clerk* – In the event the Clerk shall determine that a member of the Tribe has been enrolled through fraud or is an enrolled member of any other Indian tribe, the Clerk shall promptly prepare a report of his/her findings and forward the

same to the Business Committee for action. The Clerk shall also provide to the member the subject of the report a copy thereof by United States mail.

B. *Action of Business Committee* – On receipt of a report from the Clerk that a member of the Tribe is dually enrolled or acquired his/her membership in the Tribe through fraud, the Business Committee shall schedule a hearing to determine if such member is to be disenrolled from the Tribe. All meetings where disenrollment of a member are to be considered shall be governed by the following procedures:

1. That person who is the object of the disenrollment hearing shall be given not less than ten (10) days notice of the hearing at which his/her disenrollment will be considered by first class mail addressed to the member or if a minor or an incompetent person, to the parent or legal guardian of such member.

2. The Secretary of the Business Committee shall keep written minutes of the proceedings on the disenrollment matter and of the vote on taken on the disenrollment.

3. No decision of the Business Committee disenrolling a member of the Tribe shall be final unless made by a majority of a quorum of the Business Committee.

4. Final disenrollment decisions shall be embodied in a written resolution of the Business

Committee signed by not less than the presiding officer of that body.

a. Resolutions disenrolling a member of the Tribe shall be prepared and certified by the Clerk within five (5) days after the Business Committee hearing at which a vote was taken on the resolution.

b. Resolutions disenrolling a member of the Tribe shall state with reasonable clarity the reason(s) for the disenrollment action.

C. *Notice of Disenrollment* – Within ten (10) days of a Business Committee hearing at which a vote for disenrollment was taken, the Clerk shall send a notice by United States mail to the member the subject of the disenrollment, or those who acted on the disenrolled member's behalf, that he/she is no longer a member of the Tribe. The notice shall also contain the reason(s) for the disenrollment action and shall inform the member or those acting on the member's behalf of his/her opportunity for a reconsideration of the disenrollment action.

ARTICLE IX
FINALITY OF BUSINESS COMMITTEE DECISION

Enrollment and disenrollment decisions of the Business Committee shall be final and non-reviewable by the Tribal Court; *provided,* that an unsuccessful applicant or disenrolled member may

seek one (1) reconsideration of his/her rejection for membership or disenrollment before the Business Committee if such request for reconsideration is made in written form and filed with the Clerk within sixty (60) days of the applicant's receipt of his/ her notice of rejection for membership or disenrollment from membership in the Tribe.

ARTICLE X
MISCELLANEOUS PROVISIONS

A. *Duties of Clerk* – In addition to those duties set forth elsewhere herein, the Clerk shall:

1. Assign an enrollment number to each applicant accepted into membership in the Tribe by action of the Business Committee.

2. Maintain a membership roll that lists, for each member of the Tribe, their name, sex, enrollment number, date of acceptance into membership, date of birth, date of death and to the greatest extent possible, the degree of blood of the Tribe possessed by the member.

3. Provide to the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, certified copies of all resolutions of the Business Committee approving or denying enrollment applications and disenrolling members of the Tribe.

B. *Effect of Ordinance* – This Ordinance repeals and supersedes all prior ordinances of the Tribe

relating to the procedures and requirements for membership in the Tribe.

C. *Severability* – Should any part or any application of this Ordinance be held invalid, the remainder of this Ordinance and its applications to other situations, persons or applicants shall not be effected.

CERTIFICATION

I hereby certify that the above Ordinance was adopted by the Uintah and Ouray Tribal Business Committee at a Regular Business Committee Meeting, held in Ft. Duchesne, Utah on the 10th day of September, 1992, by a vote of 5 for and 0 against and 0 abstaining.

/s/ Dana West
Chris Bigler/Dana West, Secretary
Uintah and Ouray Tribal
Business Committee

SUBCHAPTER XXVIII-UTE INDIANS OF UTAH: DISTRIBUTION OF ASSETS BETWEEN MIXED-BLOOD AND FULL-BLOOD MEMBERS; TERMINATION OF FEDERAL SUPERVISION OVER PROPERTY OF MIXED-BLOOD MEMBERS

§ 677. Purpose

The purpose of this subchapter is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property.

(Aug. 27, 1954, ch. 1009, § 1, 68 Stat. 868.)

Repeal of Inconsistent Laws

Section 29 of act Aug. 27, 1954, provided that:" All Acts or parts of Acts, inconsistent with this Act [this subchapter] are hereby repealed insofar as they affect the tribe or its members."

Separability

Section 30 of act Aug. 27, 1954, provided that: "If any provision of this Act [this subchapter], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of

such provision to other persons or circumstances shall not be affected thereby."

§ 677a. Definitions

For the purposes of this subchapter –

(a) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

(b) "Full-blood" means a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice under the provisions of section 677c of this title.

(c) "Mixed-blood" means a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and those who become mixed-bloods by choice under the provisions of section 677c of this title.

(d) "Secretary" means Secretary of the Interior.

(e) "Superintendent" means the Superintendent of the Uintah and Ouray Reservation, Utah.

(f) "Asset" means any property of the tribe, real, personal or mixed, whether held by the tribe or by the United States in trust for the tribe, or subject to a restriction against alienation imposed by the United States.

(g) "Adult" means a member of the tribe who has attained the age of twenty-one years.

(Aug. 27, 1954, ch. 1009, § 2, 68 Stat. 868.)

§ 677b. Method of determining Ute Indian blood

For the purposes of this subchapter Ute Indian blood shall be determined in accordance with the constitution and bylaws of the tribe and all tribal ordinances in force and effect on August 27, 1954.

(Aug. 27, 1954, ch. 1009, § 3, 68 Stat. 868.)

§ 677c. Transfer of members from full-blood roll to mixed-blood group; time; certification by Secretary

Any member of the tribe whose name appears on the proposed roll of full-blood members as provided in section 677g of this title and any person whose name is added to such proposed roll as the result of an appeal to the Secretary may apply to the Superintendent to become identified with and a part of the mixed-blood group: *Provided*, That such application is made within thirty days subsequent to the publication of such proposed roll or in the event of an appeal within thirty days subsequent to notification of the decision on said appeal: *And provided further*, That before such transfer is made upon the official rolls the Secretary shall first certify that, in his opinion, such change in status is not detrimental to the best interest of the person seeking such change.

(Aug. 27, 1954, ch. 1009, §4, 68 Stat. 868.)

§ 677d. Restriction of tribe to full-blood members after publication of final rolls; non-interest of mixed-blood members; new membership

Effective on the date of publication of the final rolls as provided in section 677g of this title the tribe shall thereafter consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in this subchapter. New membership in the tribe shall thereafter be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder.

(Aug. 27, 1954, ch. 1009, § 5, 68 Stat. 868; Aug. 2, 1956, ch. 880, § 1, 70 Stat. 936.)

AMENDMENTS

1956 – Act Aug. 2, 1956, provided for control and determination of new membership in the tribe in accordance with the constitution and bylaws of the tribe and ordinances enacted thereunder.

§ 677e. Organization of mixed-blood members; constitution and bylaws; representatives; actions in absence of organization

The mixed-blood members of the tribe, including those residing on and off the reservation, shall have the right to organize for their common welfare, and may adopt an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood members of

the tribe at a special election authorized and called by the Secretary under such rules and regulations as he may prescribe. Such constitution may provide for the selection of authorized representatives who shall have power to take any action that is required by this subchapter to be taken by the mixed-blood members as a group: *Provided*, That nothing herein contained shall be construed as requiring said mixed-blood Indians to so organize if such organization is by them deemed unnecessary. In the event no such approved organization is effected, any action taken by the adult mixed-blood members, by majority vote, whether in public meeting or by referendum, but in either event, after such notice as may be prescribed by the Secretary, shall be binding upon said mixed-blood members of the tribe for the purposes of this subchapter.

(Aug. 27, 1954, ch. 1009, § 6, 68 Stat. 868.)

§ 677f. Employment of legal counsel for mixed-blood members; fees

The mixed-blood members of the tribe as a group may employ legal counsel to accomplish the legal work required on behalf of said group under the terms of this subchapter, and for any other purpose by them deemed necessary or desirable; the choice of counsel and fixing of fees to be subject to the approval of the Secretary until Federal supervision over all of the members of said group and their property is terminated in the manner provided in section 677o of this title.

(Aug. 27, 1954, ch. 1009, § 7, 68 Stat. 869.)

§ 677g. Membership rolls of full-blood and mixed-blood members; preparation and initial publication; appeal from inclusion or omission from rolls; finality of determination; final publication; inheritable interest; future membership

The tribe shall have a period of thirty days from August 27, 1954 in which to prepare and submit to the Secretary a proposed roll of the full-blood members of the tribe, and a proposed roll of the mixed-blood members of the tribe, living on August 27, 1954. If the tribe fails to submit such proposed rolls within the time specified in this subchapter, the Secretary shall prepare such proposed rolls for the tribe. Said proposed rolls shall be published in the Federal Register, and in a newspaper of general circulation in each of the counties of Uintah and Duchesne in the State of Utah. Any person claiming membership rights in the tribe, or an interest in its assets, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication in the Federal Register, or in either of the papers of general circulation, as hereinbefore provided, whichever publication date is last, may file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from either of such proposed rolls. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, and after all transfers have been made pursuant to section 677c of this title the roll of the full-blood members of the tribe, and the roll of the mixed-blood members of the tribe, shall be published

in the Federal Register, and such rolls shall be final for the purposes of this subchapter, but said sections shall not be construed as granting any inheritable interest in tribal assets to full-blood members of the tribe or as preventing future membership in the tribe, after August 27, 1954, in the manner provided in the constitution and bylaws of the tribe.

(Aug. 27, 1954, ch. 1009, § 8, 68 Stat. 869; Aug. 2, 1956, ch. 880, § 2, 70 Stat. 936.)

AMENDMENTS

1956 – Act Aug. 2, 1956, prohibited constructions of this subchapter granting inheritable interest in tribal assets to full-blood members of the tribe or preventing future membership in the tribe in accordance with its constitution and bylaws.

§ 677h. Sale or other disposition of certain described lands; funds; relief of United States from liability; assigned lands

The business committee of the tribe for and on behalf of the full-blood members of said tribe, and the duly authorized representatives for the mixed-blood members of said tribe, acting jointly, are authorized, subject to the approval of the Secretary, to sell, exchange, dispose of, and convey to any purchaser deemed satisfactory to said committee and representatives, any or all of the lands of said tribe described as follows, to wit:

Description	Section	Acres
Township 1 North, Range 1 East:		
NW/4 SW/4	35	40.00
Township 1 North, Range 1 West:		
W/2 NE/4	20	80.00
SE/4 SW/4	21	40.00
NE/4 NW/4; N/2 SW/4	28	120.00
Total		240.00
Township 2 North, Range 1 West:		
E/2 SW/4 NE/4	35	20.00
Township 1 South, Range 1 West:		
NW/4 SE/4	6	40.00
Lot 3	7	40.51
S/2 NE/4; NE/4 SE/4; W/2 SW/4 NW/4; W/2 NW/4 SW/4	16	160.00
E/2 SE/4	17	80.00
E/2 NE/4	20	80.00
SE/4 SE/4	29	40.00
Lot 2	30	40.26
SW/4 NW/4; SW/4 SE/4	35	80.00
SW/4 NE/4	36	40.00
Total		600.77
Township 1 South, Range 2 West:		
NW/4 SW/4	12	40.00
S/2 NE/4; N/2 SE/4	14	160.00
Total		200.00

Township 1 South, Range 3 West:		
SW/4 E/4	8	40.00
NW/4S NW/4	16	40.00
Total		80.00
Township 1 South, Range 8 West:		
W2/ SW4	3	80.00
NE/4 SE/4	4	40.00
All	5	721.00
All	6	695.40
NE/4 NW/4	10	40.00
NE/4 SW/4	12	40.00
SW/4 NW/4	14	40.00
Total		1,656.40
Township 2 South, Range 1 West:		
S/2 SW/4; SE/4 SE/4	1	120.00
Lot 3; SE/4 NW/4	4	81.28
Lots 1 & 2; E/2 NW/4; W/2 NE/4	7	237.78
NW/4 NW/4	12	40.00
SE/4 NE/4	13	40.00
Total		519.06
Township 2 South, Range 1 East:		
Lot 2; SE/4 NW/4	18	79.71
Township 2 South, Range 2 West:		
S/2 S/2	2	160.00
N/2	12	320.00
Total		480.00

Township 2 South, Range 3 West:		
E/2 NE/4	17	80.00
NE/4 SW/4; S/2 SE/4	19	120.00
NW/4 SW/4	29	40.00
Lots 1 & 2; E/2 NW/4; NE/4	30	316.36
Lot 2; SE14 NW14	31	78.40
Total		634.76
Township 2 South, Range 4 West:		
SW/4 SW/4	1	40.00
SE/4 SW/4; SW/4 SE/4	9	80.00
W/2 NE/4	16	80.00
NE/4	28	160.00
N/2 SE/4	32	80.00
Lots 3 & 4; N/2 SW/4	33	167.31
NE/4 SW/4; N/2 SE/4; Lots 1 & 2	36	200.46
Total		807.77
Township 2 South, Range 5 West:		
NW/4	10	160.00
NE/4 NE/4	29	40.00
N/2 NE/4; SE/4 NE/4	33	120.00
W/2 NW/4; SE/4 NW/4; N/2 SW/4; SE/4 SW/4; S/2 SE/4	34	320.00
NW/4 SE/4	36	40.00
Total		680.00
Township 2 South, Range 7 West:		
NE/4 SE/4; SW/4 SW/4	13	80.00
NE/4 NE/4; SW/4 NW/4; N/2 SW/4; SE/4 SW/4; W/2 SE/4;	14	320.00
SE/4 SE/4	15	120.00
W/2 NE/4; SE/4 NE/4		

N/2 NE/4	23	80.00
N/2 N/2; SE/4 NE/4	24	200.00
Total		800.00
Township 2 South, Range 8 West:		
SE/4 SW/4	31	40.00
Township 3 South, Range 1 East:		
Lot 2; SE/4 NW/4; S/2 NE/4	7	158.12
N/2 SW/4; SW/4 NE/4; NW/4 SE/4	16	160.00
Lots 1, 2 & 3; NE/4 SW/4	18	155.35
E/2 NE/4	30	80.00
Total		553.47
Township 3 South, Range 2 East:		
Lot 8	6	35.49
SW/4 SW/4	25	40.00
SE/4 NW/4; E/2 SW/4	36	120.00
Total		195.49
Township 3 South, Range 1 West:		
N/2 SE/4	3	80.00
Lots 1-8, Incl	22	331.46
Lots 1-4, Incl.; S/2 N/2	23	338.28
Lots 1-4, Incl.; S/2 N/2	24	341.20
W2 SE/4	25	80.00
Total		1,170.94
Township 3 South, Range 2 West:		
S/2 S/2	9	160.00
S/2 SE/4	7	80.00
SW/4 SW/4	8	40.00
W/2 SW/4	15	80.00
NE/4 SW/4; NW/4; SE/4	16	360.00
SW/4 SW/4	17	40.00

NE/4 NE/4	18	40.00
N/2 NE/4	21	80.00
N/2 NW/4	24	80.00
W/2 SW/4	33	80.00
Total		1,040.00
Township 3 South, Range 3 West:		
S/2 NW/4; NE/4 SW/4; N/2 SE/4	2	200.00
NW/4 SE/4; N/2 SW/4	17	120.00
All (Lots 1-4, Incl., E/2 W/2; E/2)	19	633.87
SW/4 SW/4	20	40.00
E/2 SW/4	21	80.00
N/2 NW/4; S/2 NE/4; NE/4 SE/4	29	200.00
W/2 NE/4; NE/4 NW/4; Lot 1	30	158.66
Total		1,432.53
Township 3 South, Range 4 West:		
SW/4 NW/4	11	40.00
S/2 SE/4; SE/4 SW/4; N/2 S/2	13	280.00
NE/4; NE/4 NW/4	24	200.00
SE/4 NE/4; W/2 NE/4; E/2 NW/4	26	200.00
E/2 NE/4	30	80.00
Total		800.00
Township 3 South, Range 5 West:		
Lots 1 & 2; SE/4 NE/4	3	118.86
Lot 4; SW/4 NW/4; W/2 SW/4; SE/4 SW/4	2	199.58
S/2 NE/4; N/2 SE/4	5	160.00
NW/4; W/2 NE/4; NE/4 SW/4; NW/4 SE/4	11	320.00
W/2 E/2	12	160.00

E/2 NE/4	13	160.00
W/2 E/2	21	160.00
SW/4 NW/4; N/2 SW/4; SW/4 SW/4	34	80.00
Total		1,358.44
Township 3 South, Range 7 West:		
Lots 3 & 4	7	66.55
S/2	13	320.00
NW/4 SW/4	16	40.00
E/2 SE/4; SW/4 SE/4; W/2 NW/4	17	200.00
E/2 NE/4; Lots 1 & 2	18	147.16
Total		773.71
Township 3 South, Range 8 West:		
E/2; NW/4; E/2 SW/4	35	560.00
S/2 S/2	1	160.00
SW/4	2	160.00
W/2 SE/4	3	80.00
Lots 3; SE/4 NW/4; NE/4 SW/4	6	120.04
SE/4	9	160.00
NE/4	10	160.00
S/2 NW/4	11	80.00
NW/4; SE/4	12	320.00
N/2 NE/4; SE/4 NE/4; NE/4 NW/4	13	320.00
NE/4; S/2	14	480.00
S/2	15	320.00
W/2 NE/4; S/2 NW/4	27	160.00
Total		3,080.04

Township 3 South, Range 9 West:		
SW/4 NW/4; NW/4 SW/4.....	27	80.00
Township 4 South, Range 2 West:		
Lot 3; NE/4 SW/4; N/2 SE/4	7	159.70
E/2 NE/4; SW/4 NE/4.....	12	120.00
E/2 NW/4; SW/4 NW/4.....	16	120.00
SE/4 NE/4; NW/4; NW/4 SW/4; N/2 SE/4.....	17	320.00
Lot 1	18	39.91
SE/4, S/2 NE/4; S/2 SW/4	21	320.00
S/2.....	22	320.00
W/2 SW/4.....	23	80.00
Lot 4	26	6.89
Lots 1-4, Incl	27	26.59
Lots 1-4, Incl	28	126.64
Lots 1-6, Incl.; NE/4; E/2 NW/4.....	30	475.16
Total		2,114.89
Township 4 South, Range 3 West:		
Lot 10	2	40.90
E/2 NE/4; NE/4 SE/4.....	13	120.00
Lots 1 & 2; N/2 SE/4; SW/4; N/2	25	622.29
All.....	26	640.00
Lots 1-6, Incl.; NW/4 NW/4	35	237.96
Lot 1	36	25.75
Total		1,686.90
Township 4 South, Range 4 West:		
S/2.....	25	320.00
Township 4 South, Range 8 West:		
N/2.....	29	320.00

Township 4 South, Range 9 West:		
S/2	9	320.00
All	10	640.00
All	11	640.00
S/2	12	320.00
N/2; N/2 S/2; SE/4 SE/4	13	520.00
N/2	14	320.00
N/2	15	320.00
N/2	16	320.00
N/2	17	320.00
Lots 3 & 4; E/2 SW/4; SE/4	18	319.09
Lots 1 & 2; E/2 NW/4; NE/4	19	319.37
Total		4,358.46
Township 4 South, Range 10 West:		
S/2	13	320.00
SE/4 NW/4; E/2 SW/4	17	120.00
NE/4 NW/4	20	40.00
Total		480.00
Township 5 South, Range 7 West:		
S/2 SW/4	35	80.00
Township 5 South, Range 9 West:		
SE/4 NW/4; S/2 NE/4	34	120.00
SW/4 NW/4	35	40.00
Total		160.00
Township 6 South, Range 9 West:		
SW/4 SE/4	5	40.00
W/2 NE/4; NW/4 SE/4	8	120.00
Total		160.00
Grand Total		27,043.34

All such sales, exchanges, or other dispositions shall be made upon such terms as said committee and said authorized representatives shall deem satisfactory and may be made pursuant to bids or at private sale, and all funds or other property derived from such sales, exchanges, or other dispositions shall be subject to the terms of this subchapter. Consent by the tribal business committee and said authorized representatives to the sale, exchange, or other disposal of the lands herein described shall relieve the United States of any liability resulting from such sale, exchange, or other disposition. The tribal business committee and said authorized representatives are further authorized to sell or dispose of tribal assigned lands to the assignees thereof under such terms and conditions as may be agreed upon by the said tribal business committee and said authorized representatives with the assignees, subject, however, to the approval of the Secretary.

(Aug. 27, 1954, ch. 1009, § 9, 68 Stat. 869.)

§ 677i. Division of assets; basis; prior alienation or encumbrance; partition by Secretary upon nonagreement; assistance; management of claims and rights; division of net proceeds; applicability of usual processes of the law to originally owned stock of corporate representative and to corporate distributions

The tribal business committee representing the full-blood group, and the authorized representatives

of the mixed-blood group, within sixty days after the publication of the final membership roll, as provided in section 677g of this title, shall commence a division of the assets of the tribe that are then susceptible to equitable and practicable distribution. Such division shall be by agreement between them subject to the approval of the Secretary. Said division shall be based upon the relative number of persons comprising the final membership roll of each group. After such division the rights or beneficial interests in tribal property of each mixed-blood person whose name appears on the roll shall constitute an undivided interest in and to such property which may be inherited or bequeathed, but shall be subject to alienation or encumbrance before the transfer of title to such tribal property only as provided herein. Any contract made in violation of this section shall be null and void. If said groups are unable to agree upon said division within a period of twelve months from the date of such commencement, or any authorized extension of said period granted within the discretion of the Secretary, the Secretary is authorized to partition the assets of the tribe in such manner as in his opinion will be equitable and fair to both groups. Such partition shall give rise to no cause of action against the United States and the costs of such partition shall be paid by the tribe. The Secretary is authorized to provide such reasonable assistance as may be requested by both groups, or by either group, in formulation and execution of a plan for the division of said assets, including necessary technical services of Government employees at Fort Duchesne, Utah, and

arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah, and political subdivisions thereof, and members of the tribe. All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

The stock of any corporation organized by the mixed-blood group for the purpose of empowering the officers of such corporation to act as the authorized representatives of said mixed-blood group in the joint management with the tribe and in the distribution and[1] unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be

[1] So in original. Probably, should be "of".

subject to mortgage, pledge, hypothecation, levy, execution, attachment or other similar process, while such stock remains in the ownership of the original stockholder or his heirs or legatees, but the interest of stockholders in any distribution by such corporation shall be subject to the usual processes of the law.

(Aug. 27, 1954, ch. 1009, § 10, 68 Stat. 873; Pub. L. 87-698, Sept. 25, 1962, 76 Stat. 597.)

REFERENCES IN TEXT

Herein, referred to in text, means act Aug. 27, 1954, ch. 1009, 68 Stat. 868, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1962 – Pub. L. 87-698 inserted last paragraph providing that originally owned stock of corporate representative should not be subject to the usual processes of the law but that corporate distributions should be subject to them.

§ 677j. Advances or expenditures from tribal funds; restrictions on mixed-blood group until adoption of plan for terminating supervision

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the tribe or either group thereof, shall be available

for advance to the tribe or the respective groups, or for expenditure, for such purposes, including per capita payments, as may be designated by the Tribal Business Committee for the full-blood members, and by the authorized agents of the mixed-blood members, and in either event subject to the approval of the Secretary: *Provided*, That the aggregate amount of the expenditures and advances authorized by this section for the mixed-blood group shall not exceed 50 per centum of the total funds of said mixed-blood group after such division, until said mixed-blood group has adopted a plan approved by the Secretary for termination of Federal supervision of said mixed-blood group, as required under section 677*l* of this title. After such termination of Federal supervision, per capita payments to the mixed-blood group shall not be subject to approval of the Secretary.

(Aug. 27, 1954, ch. 1009, § 11, 68 Stat. 873.)

§ 677k. Adjustment of debts in making per capita payments to mixed-blood members; execution of mortgages on property

Fifty per centum of all per capita payments to any individual mixed-blood member made pursuant to any division or distribution hereunder shall have deducted therefrom any sum or sums of money owed by such member to the tribe, whether due or to become due, unless in the opinion of the Secretary said debts are not adequately secured in which event the entire per capita payment shall be subject to such

offset. Any other division, partition or distribution of property to any individual mixed-blood member made pursuant to this subchapter shall be subject to a mortgage to be made in favor of the tribe securing the payment of all sums of money owed by him to the tribe on the date of such division, partition or distribution to such individual mixed-blood member. The Secretary shall require the execution of any mortgage required under this section as a condition to any such division, partition or distribution.

(Aug. 27, 1954, ch. 1009, § 12, 68 Stat. 874.)

REFERENCES IN TEXT

Hereunder, referred to in text, means act Aug. 27, 1954, ch. 1009, 68 Stat. 868, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

§ 677*l*. Distribution to individual members of mixed-blood group; preparation and approval of plan; assistance; provisions permitted in plan

After the adoption of a plan for the division of the assets between the two groups, a plan for distribution of the assets of the mixed-blood group to the individual members thereof shall be prepared and ratified by a majority of said group, within the period of six months from such adoption and presented to the Secretary for approval. The Secretary is authorized to provide such reasonable assistance, including necessary technical

service of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah and political subdivisions thereof, as may be required by the mixed-blood group in the preparation of such plan.

The plan for division of the assets among the members of the mixed-blood group may include:

(1) Complete disposition of all cash assets of said group, reserving, however, sufficient funds to cover –

(i) the proportionate share of said mixed-blood group in and to all expenses incurred in effecting the purposes of this subchapter, including, but not limited to, the necessary expense incurred under this section and section 677m of this title;

(ii) the just and proportionate share of the mixed-bloods in the expense incurred in the prosecution of the claims of the tribe, or the bands thereof, against the United States; and

(iii) the determinable and estimated administrative costs and expenses of any mixed-blood organization authorized by this subchapter, including lawful and reasonable salaries and fees of authorized agents, officers and employees of said mixed-blood group.

(2) Partition of the lands of the mixed-blood group, excepting all gas, oil, and mineral rights, to corporations, partnerships, or other legal entities, and to trustees, and the individual members of said groups, quality and quantity relatively considered, according to the respective rights and

interests of the parties, located so as to embrace, as far as practicable, any improvements lawfully made by the person or persons receiving such land. The value of the improvements made, under a valid lease or assignment from the tribe, shall be excluded from the valuation in making allotments to the lessee or assignee, and the land must be valued without regard to such improvements unless the lease or assignment, under which said improvements were made, provided that such improvements should become the property of the tribe. In the making of any partition due consideration shall be given to all of the rights and interests of the person or persons receiving the property, and all of the rights and interests of the other members of the tribe. Two or more of the members of said mixed-blood group may obtain their share of property as tenants in common, as joint tenants, or in any other lawful manner when such members agree among themselves as to the manner in which they desire to receive such title. When it appears that an equitable partition cannot be made among the members of said mixed-blood group without prejudice to the rights and interests of some of them, and yet a partition is directed by the group, the members of said group may voluntarily determine compensation to be made by one party to another on account of the inequity. In all cases where equity is agreed upon by the members of said mixed-blood group, such compensatory adjustment among the parties, according to the principles of equity, must be approved by the Secretary. In the event of a failure to agree upon an equitable compensatory adjustment among the parties the Secretary shall make such adjustment and his decision shall be final.

(3) Organization of corporations for the grazing of livestock, handling of water and water rights, and the shares therein may be issued to the members of said group in proportion to their interests in the assets of such corporations. When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose, the Secretary is authorized to make such transfer.

(4) A transfer of assets to one or more trustees designated by said group who shall hold title to all or any part of the property of said group for management or liquidation purposes under terms and conditions prescribed by said mixed-blood group. The Secretary is authorized to make such transfer, and approve the trustees, and the terms and conditions of the trust.

(5) Sale of any portion of the assets of said group subject to the approval of the Secretary. In addition to the sales herein otherwise authorized, authority is granted to the authorized representatives of said group to sell any property of said group when, in the opinion of the majority of said mixed-blood group, a practicable partition cannot be made, or for any other reason it is deemed to the best interests of the group, and the proceeds of such sales shall be distributed equitably among the members of said mixed-blood group; after deducting reasonable cost of sale and distribution.

(Aug. 27, 1954, ch. 1009, § 13, 68 Stat. 874.)

§ 677m. Procedure by Secretary if distribution not completed within seven years from August 27, 1954

In the event all the tribal assets, susceptible to equitable and practicable distribution, distributed to the mixed-blood group under the provisions of section 677i of this title, are not, within seven years from August 27, 1954, distributed to the individual mixed-blood members as contemplated in the plan to be adopted in accordance with the provisions of section 677*l* of this title, so as to effectively terminate Federal supervision over said assets, then the Secretary shall proceed to make such distribution in a manner, in his discretion, deemed fair and equitable to all members of said group, or convey such assets to a trustee for liquidation and distribution of the net proceeds, or convey such assets to the persons entitled thereto as tenants in common.

(Aug. 27, 1954, ch. 1009, § 14, 68 Stat. 875.)

§ 677n. Disposal by mixed-blood members of their individual interests in tribal assets; requisites and conditions

Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any

interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period.

(Aug. 27, 1954, ch. 1009, § 15, 68 Stat. 876.)

§ 677*o*. Termination of restrictions on individually owned property of the mixed-blood group

(a) Transfer of control of trust property; removal of sales restrictions

When any mixed-blood member of the tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 677i of this title, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except

as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of this subchapter, notwithstanding anything contained herein to the contrary.

(b) Partition or sale by Secretary prior to removal of restrictions

Prior to the removal of restrictions in accordance with the provisions of subsection (a) of this section on land owned by more than one person, the Secretary may –

(1) upon request of any of the owners, partition the land and issue to each owner an unrestricted patent or deed for his individual share, unless such owner is a full-blood member of the tribe or other Indian who owns trust or restricted property, in which event a trust patent or restricted deed shall be issued and such trust may be terminated or such restrictions may be removed when the Secretary determines that the need therefor no longer exists;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided,* That before a sale any one or more of the owners may elect to purchase the other interests in the land,

or the tribe may elect to purchase the entire interest in the land, at not less than the appraised value thereof.

(Aug. 27, 1954, ch. 1009, § 16, 68 Stat. 876.)

REFERENCES IN TEXT

Herein, referred to in subsec. (a), means act Aug. 27, 1954, ch. 1009, 68 Stat. 868, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

§ 677p. Tax exemption; exceptions and time limits; valuation for income tax on gains or losses

No distribution of the assets made under the provisions of this subchapter shall be subject to any Federal or State income tax: *Provided*, That so much of any cash distribution made hereinunder as consists of a share of any interest earned on funds deposited in the Treasury of the United States shall not by virtue of this subchapter be exempt from individual income tax in the hands of the recipients for the year in which paid. Property distributed to the mixed-blood group pursuant to the terms of this subchapter shall be exempt from property taxes for a period of seven years from August 27, 1954, unless the original distributee parts with title thereto, either by deed, descent, succession, foreclosure of mortgage, sheriff's sale or other conveyance: *Provided*, That the mortgaging, hypothecation, granting of a right-of-way, or

other similar encumbrance of said property shall not be construed as a conveyance subjecting said property to taxation under the provisions of this section. After seven years from August 27, 1954, all property distributed to the mixed-blood members of the tribe under the provisions of this subchapter, and all income derived therefrom by the individual, corporation, or other legal entity, shall be subject to the same taxes, State and Federal, as in the case of non-Indians; except that any corporation organized by the mixed-blood members for the purpose of aiding in the joint management with the tribe and in the distribution of unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to corporate income taxes. Any valuation for purposes of Federal income tax on gains or losses shall take as the basis of the particular taxpayer the value of the property on the date title is transferred by the United States pursuant to this subchapter.

(Aug. 27, 1954, ch. 1009, § 17, 68 Stat. 876; Aug. 2, 1956, ch. 880, § 3, 70 Stat. 936.)

AMENDMENTS

1956 – Act Aug. 2, 1956, included within exception clause provisions respecting exemption from corporate income taxes.

§ 677q. Applicability of decedents' estates laws to individual trust property of mixed-blood members

The laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed-blood members of the tribe until Federal supervision is terminated. Thereafter, the laws of the several States, Territories, possessions, and the District of Columbia within which such mixed-blood members reside at the time of their death shall apply.

(Aug. 27, 1954, ch. 1009, § 18, 68 Stat. 877.)

§ 677r. Indian claims unaffected

Nothing in this subchapter shall affect any claim heretofore filed against the United States by the tribe, or the individual bands comprising the tribe.

(Aug. 27, 1954, ch. 1009, § 19, 68 Stat. 877.)

§ 677s. Valid leases, permits, liens, etc., unaffected

Nothing in this subchapter shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved.

(Aug. 27, 1954, ch. 1009, § 20, 68 Stat. 877.)

§ 677t. Water rights

Nothing in this subchapter shall abrogate any water rights of the tribe or its members.

(Aug. 27, 1954, ch. 1009, § 21, 68 Stat. 877.)

§ 677u. Protection of minors, persons non compos mentis, and other members needing assistance; guardians

For the purposes of this subchapter, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis, or, in the opinion of the Secretary, in need of assistance in conducting their affairs, by such means as he may deem adequate, but appointment of guardians pursuant to State laws, in any case, shall not be required until Federal supervision has terminated.

(Aug. 27, 1954, ch. 1009, § 22, 68 Stat. 877.)

§ 677v. Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws

Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United

States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

(Aug. 27, 1954, ch. 1009, § 23, 68 Stat. 877.)

§ 677w. Presentation of development program for full-blood group to eventually terminate Federal supervision

Within three months after August 27, 1954, the business committee of the tribe representing the full-blood group thereof shall present to the Secretary a development program calculated to assist in making the tribe and the members thereof selfsupporting, without any special Government assistance, with a view of eventually terminating all Federal supervision of the tribe and its members.

(Aug. 27, 1954, ch. 1009, § 24, 68 Stat. 877; Pub. L. 93-608, § 1(15), Jan. 2, 1975, 88 Stat. 1969.)

AMENDMENTS

1975 – Pub. L. 93-608 struck out requirement of an annual progress report, through the Secretary, by the tribal business committee representing the full-blood group.

§ 677x. Citizenship status unaffected

Nothing in this subchapter, shall affect the status of the members of the tribe as citizens of the United States.

(Aug. 27, 1954, ch. 1009, § 25, 68 Stat. 877.)

§ 677y. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments, as may be necessary or appropriate to carry out the provisions of this subchapter, or to establish a marketable and recordable title to any property disposed of pursuant to this subchapter.

(Aug. 27, 1954, ch. 1009, § 26, 68 Stat. 877.)

§ 677z. Rules and regulations; tribal or group referenda

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of this subchapter, and may, in his discretion, provide for tribal or group referenda on matters pertaining to management or disposition of tribal or group assets.

(Aug. 27, 1954, ch. 1009, § 27, 68 Stat. 878.)

§ 677aa. Procedure by Secretary upon non-agreement between mixed-blood and full-blood groups

Whenever any action pursuant to the provisions of this subchapter requires the agreement of the mixed-blood and full-blood groups and such agreement cannot be reached, the Secretary is authorized to proceed in any manner deemed by him to be in the best interests of both groups.

(Aug. 27. 1954. ch. 1009, § 27, 68 Stat. 878.)

COOPERATIVE AGREEMENT

Between the

UTE INDIAN TRIBE

and the

STATE OF UTAH

THIS AGREEMENT is made and entered into by and between the State of Utah and the Ute Indian Tribe.

WHEREAS, the Parties recognize a need for cooperation in the management and taking of fish and wildlife within the original boundaries of the *Uintah* and Ouray Reservation; and

WHEREAS, the State and the Tribe desire to manage wildlife in an atmosphere of a healthy ongoing government-to-government relationship through an agreement to cooperatively manage the resources and allocate hunting, fishing, and trapping opportunities on the Reservation; and

WHEREAS, those lands which comprise the Reservation have been identified and defined in *Hagen v. Utah,* 510 U.S. 399 (1994) and *Ute Indian Tribe v. Utah,* 114 F.3d 1513 (10th Cir. 1997); and

WHEREAS, settling the matters which are the subject of this Agreement is consistent with the spirit and intent of the Memorandum of Understanding entered into between

the State and the Tribe in December, 1994,

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the State and the Tribe agree as follows:

SECTION ONE
DEFINITIONS

As between the Parties, for the purposes of this Agreement, and this Agreement only, the following terms shall have the meanings set forth, unless the context clearly requires otherwise.

1. "Authorized Sportsmen" means Tribal Members and Mixed-Bloods who have been issued an Non-Trust Lands hunting, trapping, or fishing permit by the Tribe or who have otherwise been granted authority under this Agreement to hunt, trap, or fish on *Hagen* Lands.

2. "*Hagen* Lands" shall mean those lands within the original boundaries of the Reservation which were determined to have been removed therefrom in *Hagen v. Utah,* 510 U.S. 399 (1994) and *Ute Indian Tribe v. Utah,* 114 F.3d 1513 (10th Cir. 1997), including those lands known as the 'Strawberry Reclamation Project" and the "Gilsonite Strip."

3. "Mixed-Bloods" means those former members of the Tribe whose names appear on the Final Mixed-Blood Roll published in the Federal Register on April 5, 1956.

4. "Non-Member Indian(s)" means an enrolled member of an Indian tribe other than the Tribe that is recognized by the Secretary of the Interior as possessing a government-to-government relationship with the United States.

5. "Non-Trust Lands" means those lands of the Reservation that are not held in trust by the United States for the Tribe, an individual or group of individuals.

6. "Parties" means the State and the Tribe.

7. "Permit" means an authorization issued by the State or Tribe to an individual to hunt, fish, or trap in a particular area.

8. "Proper Identification" means the documents described for the Individuals set forth below:

a. *Tribal Members* – an identification card issued by the Tribe.

b. *Mixed-Bloods* – a Mixed-Blood identification card issued by the Bureau of Indian Affairs.

c. *Non-Member Indians* – an identification card issued by the Indian tribe of which such person is an enrolled member.

d. *All Others* – a valid picture identification card, *e.g.*, driver's license, issued by the state in which such person resides.

9. "Reservation" and "Reservation Lands" means those lands within the original confines of the Uintah

and Ouray Reservation as set forth by Executive Orders of October 3, 1861, and January 5, 1882, that were determined to be Indian country (*see* 18 U.S.C. § 1151) in *Hagen v. Utah*, 510 U.S. 399 (1994) and *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997).

10. "State" means the State of Utah.

11. "Tag" means a card, label or other identification device, with appropriate notches, issued for attachment to the carcass of wildlife.

12. "Tribal Member(s)" means any person or persons enrolled as a member(s) of the Tribe.

13. "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

14. "Trust Lands" means those lands of the Reservation that are held in trust by the United States for the benefit of the Tribe, an individual or group of individuals, and which are subject to the exclusive jurisdiction of the Tribe and the United States.

SECTION TWO
COOPERATIVE MANAGEMENT

The Parties shall work together in the management of wildlife resources as a valuable resource that inhabits lands subject to the jurisdiction of the Tribe and the State. The Parties agree to meet at least annually to implement cooperative management. The Parties shall exchange data on the size

and composition of game herds, the condition of wildlife habitat, and the annual harvest of game animals. The State will manage wildlife resources on *Hagen* and Non-Trust Lands and the Tribe will manage wildlife resources on Trust Lands. Both Parties will endeavor to develop and implement cooperative species management plans and joint management projects when opportunities arise.

Both Parties agree to communicate with each other on high priority wildlife projects or wildlife-related concerns throughout the course of the year, Examples may include, but are not limited to, fish kills in streams or reservoirs, captures, wildlife marking and/or selling of wildlife, transplants of unique species, re-introduction of threatened/endangered species, and large scale rehabilitation projects for wildlife habitat.

Both Parties agree to cooperate in an equitable manner when exchanging, transplanting, or removing excess wildlife.

SECTION THREE
HUNTER SAFETY REQUIREMENT

Before issuing a hunting permit to a person under the age of eighteen for hunting on *Hagen* or Non-Trust Lands, the Parties shall require that such person establish by means of a certificate or otherwise that the person has completed a hunter safety course in accordance with the Parties' respective requirements. This section shall be construed consistent with Section Five.

SECTION FOUR
DEPREDATION HUNTING

The Parties shall cooperate in dealing with situations where wildlife needs to be reduced in numbers or otherwise controlled. When the State and the Tribe agree that animals need to be removed to prevent depredation, the Tribe shall have the responsibility for arranging depredation control efforts on Trust lands and the State shall have the responsibility for arranging depredation control efforts on *Hagen* and Non-Trust Lands.

SECTION FIVE
AUTHORIZED SPORTSMEN

Subject to this Agreement and the hunter safety requirements of Section Three, the Tribe shall have the responsibility for determining who qualifies as an Authorized Sportsman for *Hagen*, Trust, and Non-Trust Lands. Authorized Sportsmen hunting, fishing or trapping on *Hagen*, Tribal, and Non-Trust Lands shall not be required to possess a State-issued hunting, fishing or trapping permit. However, nothing in this Agreement shall authorize, or shall be construed as authorizing, Mixed-Bloods to hunt, fish, or trap on *Hagen* Lands without a State-issued permit. Where an Authorized Sportsman elects to apply for a hunting permit outside this agreement through the State process, State hunter safety requirements must be satisfied before such license or permit may be issued. Further, compliance with all State hunting, fishing, and trapping regulations shall be required.

SECTION SIX
PROPER IDENTIFICATION

All persons hunting, fishing, trapping or transporting animals on *Hagen* or Non-Trust Lands shall have the appropriate permit and Proper Identification immediately available while engaged in such activities.

SECTION SEVEN
FORM OF TAGS

Tags issued by the Tribe and by the State to the holders of permits for hunting and trapping on *Hagen* and Non-Trust Lands shall be of the type that require successful hunters to cut a notch in the tag, so that no more than the authorized number of animals are harvested by each hunter. Wildlife officials of the Tribe and of the State shall cooperate in checking the tags of hunters and trappers on *Hagen* and Non-Trust Lands, to ensure they possess a tag and that the required notching has been done by the tag holder who harvested the wildlife.

SECTION EIGHT
LAW ENFORCEMENT

The State and the Tribe shall exercise civil and criminal jurisdiction over hunting, fishing, and trapping activities on the Reservation in accordance with the Parties' respective authorities under *Hagen v. Utah*, 510 U.S. 399 and *Ute Indian Tribe v. Utah*, 114 F.3d 1513; provided however, that Tribal Members

charged with misdemeanor wildlife offenses committed on *Hagen* Lands shall be referred to the courts and officers of the Tribe for processing and prosecution consistent with the procedural requirements of all other applicable agreements between the Tribe and the State.

SECTION NINE
PROCLAMATION OF TRIBE AND STATE

1. *Hunting and Trapping Proclamation of Tribe* – The Tribe, through its annual proclamations, shall inform Authorized Sportsmen about the terms and conditions of hunting and trapping on the *Hagen* and Non-Trust Lands. The Tribe agrees that its hunting and trapping proclamations and regulations for *Hagen* and Non-Trust Lands shall be consistent with the State's annual proclamations and regulations relative to season dates, methods of take, bag limits, antler restrictions, and other hunting and trapping requirements. The proclamations shall further state that Mixed-Bloods are not eligible for status as Authorized Sportsmen on *Hagen* Lands. In this regard, the Tribe shall advise Authorized Sportsmen that they are not permitted to hunt or trap upon privately-owned lands that are posted against trespassing without the prior consent of the landowner.

2. *Hunting and Trapping Proclamations of State* – The State shall inform hunters and trappers holding a State-issued permit for *Hagen* and Non-Trust Lands that possession of such a permit does not

authorize them to hunt, trap, or trespass upon Trust Lands. Notification to this effect shall appear in the State's annual proclamations and on all associated maps. In the event the State issues maps to sportsmen, Trust Lands shall be identified on such maps and identified as areas closed to hunting and trapping under a State-issued permit.

3. *Fishing Proclamation of Tribe* – Fishing proclamations of the Tribe covering *Hagen* and Non-Trust Lands shall inform Tribal Members and Mixed-Bloods that: (a) Mixed-Bloods are prohibited from fishing on *Hagen* Lands without a State-issued fishing license; and (b) with the exception noted in 3(a), they need not possess a State Fishing license for activities conducted on *Hagen* and Non-Trust Lands. Tribal Members and Mixed-Bloods not required to possess a State-issued fishing license under this Agreement must have in their possession Proper Identification. The Tribe agrees that its fishing proclamation for *Hagen* and Non-Trust Lands shall be consistent with the State's annual proclamation and regulations relative to season dates, method of take, bag limits, size and species restrictions, and other fishing requirements. In this regard, the Tribe shall advise Authorized Sportsmen that they are not permitted to fish upon privately-owned lands that are posted against trespassing without the prior consent of the landowner.

4. *Fishing Proclamation of State* – Fishing proclamations of the State shall inform persons that they must possess a fishing license issued by the

Tribe to fish upon Trust Lands, and that possession of a State-issued Fishing license does not grant to such persons the authority to fish or trespass upon Trust Lands.

5. *Bag Limits* – Any person having overlapping authority to hunt, trap or fish Trust Lands, Non-Trust Lands and/or *Hagen* Lands, unless otherwise provided in this Agreement, may not cumulatively take or possess on those lands more than one bag limit.

SECTION TEN
GENERAL SEASONS ON *HAGEN* AND NON-TRUST LANDS

Subject to the restrictions in Sections Five, Nine, and Twelve, the Tribe may distribute to Authorized Sportsmen permits and associated tags permitting the annual harvest of a total of one (1) buck deer and one (1) bull elk on *Hagen* and Non-Trust Lands, excluding closed or limited entry hunt units. Authorized Sportsmen may harvest only the deer or elk to fill their own permits, and may not fill the permit of another person. The Tribe may permit Authorized Sportsmen to take one buck deer and/or one bull elk on *Hagen* and Non-Trust Lands in addition to any male animal(s) lawfully taken on Trust Lands.

Animals shall be harvested by Authorized Sportsmen during the time frame set out in the Big Game Proclamations of the Tribe and State; provided however, the Parties agree that the Tribe

may authorize Authorized Sportsmen to hunt deer on *Hagen* and Non-Trust Lands within the South Slope hunting unit, during a period that begins the first Saturday following the end of the State's general archery buck deer hunt and ends ten (10) days thereafter.

SECTION ELEVEN
LIMITED ENTRY/DRAW PERMITS

The Parties recognize that there are certain portions of the *Hagen* and Non-Trust Lands that are managed as limited entry hunting units. The Parties agree that the Tribe may, pursuant to its proclamations and subject to the limitations in Sections Five, Nine, and Twelve, issue to Authorized Sportsmen a proportional number of permits that reflects the total amount of *Hagen* and Reservation Lands committed to those limited entry hunt areas that extend into or fall within the original exterior boundary of the Reservation. Limited entry permits shall be issued and used in accordance with both applicable proclamations of the State and the Tribe.

1. For purposes of this Agreement, the Parties agree that the Tribe shall issue to Authorized Sportsmen twenty-five percent (25%) of the permits allocated by the State to the *Hagen* and Non-Trust Lands of each limited entry draw unit or subunit. The number of permits to be issued by the tribe for each limited entry draw unit or subunit shall be

determined through application of the example provided below.

Examples: The lands enclosed within a limited entry hunt unit or subunit are composed of sixty percent (60%) *Hagen* and Reservation Lands and forty percent (40%) non-*Hagen* and non-Reservation lands, for which one hundred (100) limited entry bull elk permits are available. Of the one hundred (100) permits, sixty percent (60%) are allocable to the *Hagen* and Reservation Lands of the unit or subunit (100 permits x 60% of the unit/subunit acreage = 60 permits). The Tribe is entitled to issue twenty-five percent (25%) of the permits allocable to the *Hagen* and Reservation Lands. Thus, the Tribe will be permitted to issue fifteen (15) permits for such limited entry unit or subunit (60 permits x 25% = 15).

The lands enclosed within a limited entry hunt unit of subunit are composed of ninety percent (90%) Reservation Lands and ten (10%) percent non-Reservation lands, for which fifty (50) limited entry bull elk permits are available. Of the fifty (50) permits, ninety percent (90%) are allocable to the Reservation Lands of the unit or subunit (50 permits x 90% of the unit/subunit acreage = 45 permits). The Tribe is entitled to issue twenty-five percent (25%) of the permits allocable to the Reservation Lands. Thus, the Tribe will be permitted

to issue twelve (11) permits for such limited entry unit or subunit (45 permits x 25% = 11.25, rounded normally to 11).

In all instances, the number of pennies available to the Tribe for issuance to Authorized Sportsmen shall be further determined by rounding the figure arrived at under the preceding formula to the next closest whole number; *e.g.*: (i) if the number is 14.5 through 15.4 permits, the Tribe may issue 15 permits; and (ii) if the number is 15.5 through 16.4 permits, the Tribe may issue 16 permits.

2. For purposes of calculating the Tribe's allocable share of permits, the total number of permits available for limited entry hunts shall include all permits identified by the State for issuance. This "total number of permits" shall include, without any limitation, permits issuable to landowners, residents, non-residents, and the Tribe.

3. Notwithstanding the permit allocation formula outlined in this Section, the State will allocate to the Tribe for issuance to Authorized Sportsmen no less than one (1) permit for each limited entry hunt where a hunting unit or subunit includes within its area *Hagen* and/or Reservation Lands.

SECTION TWELVE
HAGEN LANDS

In consideration of the Tribe's commitments herein, the State agrees to allow Tribal Members hunting, fishing and trapping opportunities on *Hagen*

Lands to the extent the same are available under this Agreement on Non-Trust Lands. Mixed-Bloods may not hunt, fish or trap on *Hagen* Lands without the appropriate State-issued permit, regardless of whether they possess a permit, including a limited entry permit, issued by the Tribe for Trust and/or Non-Trust Lands. Nothing in this Section shall be construed as authorization for Tribal Members or Mixed-Bloods to hunt, fish, or trap on privately owned lands that are posted against trespassing without the prior consent of the landowner.

SECTION THIRTEEN
ACCESS

In consideration of the State's commitments herein, the Tribe agrees to allow access to the Book Cliffs roadless area through Sego Canyon on the Totem Pole Trail and the Went Ridge Road by State officials and the general public.

1. *Access of Public.* The general public's access is restricted to the period of time beginning May 1st and ending November 30th of each year. In return for such access, the State agrees to provide trespass enforcement, trail maintenance, fence construction/maintenance, and signing on those portions of the Totem Pole Trail and Went Ridge Road that cross Trust Lands.

2. *Access of State.* With respect to access for State officials across other Trust Lands, the State will, on an annual basis, provide the Tribe with a list

of employees and vehicles who may have need, as part of their official duties, to cross Trust Lands. In addition, if State employees need or desire to be on Trust Lands for extended periods of time to conduct specific management projects, permission will be sought by contacting the Tribe. Thereafter the Tribe will grant access over Trust Lands to State employees carrying out approved projects and who possess adequate State identification within the time frames approved by the Tribe.

SECTION FOURTEEN
TERM AND TERMINATION

This Agreement shall be effective on the date executed by the Parties and shall remain in force in perpetuity, unless terminated as set forth herein. Either the State or the Tribe may terminate this Agreement by giving written notice to the other party no later than January 31 of any calendar year. If such notice is not given on or before January 31 that the Agreement is terminated, the Agreement shall remain in force for that year and may not be terminated until the next year.

SECTION FIFTEEN
WAIVER AND ESTOPPEL

The Tribe and the State agree that nothing contained herein shall be deemed a waiver, estoppel, or creation of vested rights or an acceptance by either party hereto of a position with respect to wildlife

management, general jurisdiction, or definition of those lands comprising the Reservation.

SECTION SIXTEEN
MISCELLANEOUS PROVISIONS

1. *Notice* – All notices required to be given pursuant to this Agreement shall be sent by registered or certified mail, with postage paid, to the Parties at the following addresses:

Ute Indian Tribe
Fish and Wildlife Department
Attn: Director
P.O. Box 190
Fort Duchesne, Utah 84026

State of Utah
Division of Wildlife Resources
Attn: Director
1594 West North Temple
Salt Lake City, Utah 84114-6301

2. *Headings* – All headings used in this Agreement are inserted only for convenience and ease of reference, and are not to be considered in the construction or interpretation of any provision of this Agreement.

3. *Entire Agreement* – This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject addressed herein and supersedes and renders void any prior understandings, negotiations, or agreements between the Parties affecting this subject. No

provision of this Agreement may be changed, modified, waived, or amended without the prior written consent of the Parties.

IN WITNESS WHEREOF the State of Utah and the Ute Indian Tribe of the Uintah and Ouray Reservation do hereby enter into this Agreement effective this 7th day of May, 1999.

UTE INDIAN TRIBE

By: /s/ Ronald Wopsock
Ronald Wopsock, Chair
Uintah and Ouray Tribal Business Committee

STATE OF UTAH

By: /s/ Michael O. Leavitt
Michael O. Leavitt
Governor
State of Utah